

PROTECTION OF DOMESTIC DEPARTMENT OF STATE
OCCUPIED FACILITIES;
CONGRATULATING ALEJANDRO TOLEDO ON HIS ELECTION
TO THE PRESIDENCY OF PERU, ETC.;
THE GOVERNMENT OF THE PRC SHOULD CEASE ITS
PERSECUTION OF FALUN GONG PRACTITIONERS;
TERRORIST KIDNAPPERS IN ECUADOR AND SUPPORTING
EFFORTS BY THE U.S. TO COMBAT SUCH TERRORISM;
EXPORT ADMINISTRATION ACT OF 2001;
VIETNAM HUMAN RIGHTS ACT;
CORAL REEF AND COASTAL MARINE
CONSERVATION ACT OF 2001

MARKUP

BEFORE THE

COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

**H.R. 2541, H. Res. 181, H. Con. Res. 188,
H. Con. Res. 89, H.R. 2581, H.R. 2368,
and H.R. 2272**

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PROTECTION OF DOMESTIC DEPARTMENT OF STATE OCCUPIED FACILITIES; CONGRATULATING ALEJANDRO TOLEDO ON HIS ELECTION TO THE PRESIDENCY OF PERU, ETC.; THE GOVERNMENT OF THE PRC SHOULD CEASE ITS PERSECUTION OF FALUN GONG PRACTITIONERS; TERRORIST KIDNAPPERS IN ECUADOR AND SUPPORTING EFFORTS BY THE U.S. TO COMBAT SUCH TERRORISM; EXPORT ADMINISTRATION ACT OF 2001; VIETNAM HUMAN RIGHTS ACT; CORAL REEF AND COASTAL MARINE CONSERVATION ACT OF 2001

WEDNESDAY, AUGUST 1, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 10:25 a.m. in Room 2172, Rayburn House Office Building, Hon. Henry Hyde, (Chairman of the Committee) presiding.

Chairman HYDE. Committee will come to order. I would like to inform the Members it is the Chair's intention to complete consideration of H.R. 2581, the Export Administration Act of 2001; H.R. 2368, the Vietnam Human Rights Act; and H.R. 2272, and the Coral Reef and Coastal Marine Conservation Act of 2001 as soon as possible. We had hoped to do these today, but realistically, that is not going to be possible, so we will do the best we can.

I am informed there is no controversy nor amendments to the other four bills that are on our agenda. Accordingly, without objection the Chair wishes to seek consideration of the following bills on the suspension calendar:

H.R. 2541, to enhance the authorities of special agents of the Department of State;

H. Res. 181, congratulating President-Elect Alejandro Toledo on his election to the presidency of Peru and expressing sympathy for the victims of the devastating earthquake that struck Peru on June 23, 2001;

H. Con. Res. 188, expressing the sense of Congress that the government of the People's Republic of China should cease its persecution of Falun Gong practitioners; and

H. Con. Res. 89, mourning the death of Ron Sander at the hands of terrorist kidnapers in Ecuador and supporting efforts by the United States to combat such terrorism.

[The text of H.R. 2541, H. Res. 181, H. Con. Res. 188, and H. Con. Res. 89 follows:]

107TH CONGRESS
1ST SESSION

H. R. 2541

To enhance the authorities of special agents and provide limited authorities to uniformed officers responsible for the protection of domestic Department of State occupied facilities.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2001

Mr. HYDE (for himself and Mr. LANTOS) introduced the following bill; which was referred to the Committee on International Relations

A BILL

To enhance the authorities of special agents and provide limited authorities to uniformed officers responsible for the protection of domestic Department of State occupied facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SPECIAL AGENT AUTHORITIES.**

4 (a) GENERAL AUTHORITY OF SPECIAL AGENTS.—

5 Section 37(a) of the State Department Basic Authorities
6 Act of 1956 (22 U.S.C. 2709(a)) is amended—

7 (1) by striking paragraph (2) and inserting the
8 following:

1 “(2) in the course of performing the functions
2 set forth in paragraphs (1) and (3), obtain and exe-
3 cute search and arrest warrants, as well as obtain
4 and serve subpoenas and summonses, issued under
5 the authority of the United States;”;

6 (2) in paragraph (3)(F) by inserting “or Presi-
7 dent-elect” after “President”; and

8 (3) by striking paragraph (5) and inserting the
9 following:

10 “(5) in the course of performing the functions
11 set forth in paragraphs (1) and (3), make arrests
12 without warrant for any offense against the United
13 States committed in the presence of the special
14 agent, or for any felony cognizable under the laws
15 of the United States if the special agent has reason-
16 able grounds to believe that the person to be ar-
17 rested has committed or is committing such felony.”.

18 (b) CRIMES.—Section 37 of such Act (22 U.S.C.
19 2709) is amended by inserting after subsection (e) the fol-
20 lowing new subsections:

21 “(d) INTERFERENCE WITH AGENTS.—Whoever
22 knowingly and willfully obstructs, resists, or interferes
23 with a Federal law enforcement agent engaged in the per-
24 formance of the protective functions authorized by this

4

3

1 section shall be fined under title 18 or imprisoned not
2 more than one year, or both.

3 “(e) PERSONS UNDER PROTECTION OF SPECIAL
4 AGENTS.—Whoever engages in any conduct—

5 “(1) directed against an individual entitled to
6 protection under this section, and

7 “(2) which would constitute a violation of sec-
8 tion 112 or 878 of title 18, United States Code, if
9 such individual were a foreign official, an official
10 guest, or an internationally protected person,

11 shall be subject to the same penalties as are provided for
12 such conduct directed against an individual subject to pro-
13 tection under such section of title 18.”.

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107TH CONGRESS
1ST SESSION

H. RES. 181

Congratulating President-elect Alejandro Toledo on his election to the Presidency of Peru, congratulating the people of Peru for the return of democracy to Peru, and expressing sympathy for the victims of the devastating earthquake that struck Peru on June 23, 2001.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2001

Mr. BALLENGER (for himself, Mr. HYDE, Mr. MENENDEZ, Mr. DELAHUNT, Mr. FALCOMA, Mr. LEACH, Mr. HASTINGS of Florida, Mr. SHERMAN, Mr. BERMAN, Mr. CROWLEY, Mr. HUTCHINSON, Ms. WATSON of California, Mr. DAVIS of Florida, Ms. PELOSI, Mr. ORTIZ, Mr. KUCINICH, Mr. DEFazio, Mr. TIERNEY, Mr. CAPUANO, Mr. UDALL of New Mexico, Mr. RYUN of Kansas, Ms. WOOLSEY, Mr. LANGEVIN, Mr. THOMPSON of California, Mr. PETERSON of Minnesota, Mr. FARR of California, Mr. OLVER, Mr. KENNEDY of Minnesota, Mr. ETHERIDGE, Ms. HARMAN, Mr. CONDIT, Ms. SOLIS, Mr. MORAN of Virginia, Mr. GALLEGLY, Mr. HERGER, Mr. BROWN of South Carolina, Mr. DUNCAN, Mr. GRAHAM, Mr. JENKINS, Mr. SAXTON, Mr. CRANE, Mr. CALLAHAN, and Mr. FLAKE) submitted the following resolution; which was referred to the Committee on International Relations

RESOLUTION

Congratulating President-elect Alejandro Toledo on his election to the Presidency of Peru, congratulating the people of Peru for the return of democracy to Peru, and expressing sympathy for the victims of the devastating earthquake that struck Peru on June 23, 2001.

1 *Resolved,*

1 **SECTION 1. DEMOCRATIC ELECTIONS IN PERU AND**
2 **UNITED STATES-PERUVIAN RELATIONS.**

3 (a) FINDINGS.—The House of Representatives finds
4 the following:

5 (1) The people of Peru have courageously
6 struggled to restore democracy and the rule of law
7 to Peru following the fraudulent elections on May
8 28, 2000, and the decade of undemocratic rule by
9 former President Alberto Fujimori.

10 (2) In elections on April 8 and June 3, 2001,
11 the people of Peru held democratic elections to
12 choose their government.

13 (3) These elections were determined by domes-
14 tic and international observers to be free, fair, trans-
15 parent, and the legitimate expression of the will of
16 the people of Peru.

17 (4) The 2001 elections in Peru form the foun-
18 dation for a democratic government that represents
19 the will and sovereignty of the people of Peru.

20 (b) STATEMENT OF POLICY REGARDING ELECTIONS
21 IN PERU.—The House of Representatives, on behalf of the
22 people of the United States—

23 (1) congratulates the people of Peru for the
24 successful completion of free and fair elections held
25 on April 8 and June 3, 2001;

1 (2) congratulates Alejandro Toledo for his elec-
2 tion as President of Peru and his continued strong
3 commitment to democracy;

4 (3) congratulates Valentin Paniagua, the cur-
5 rent President of Peru, for his commitment to en-
6 suring a stable and peaceful transition to democracy
7 and the rule of law; and

8 (4) congratulates the Organization of American
9 States (OAS) Electoral Observer Mission, led by
10 Eduardo Stein, for its service in promoting rep-
11 resentative democracy in the Americas by working to
12 ensure free and fair elections in Peru.

13 (c) SENSE OF THE HOUSE OF REPRESENTATIVES
14 REGARDING RELATIONS BETWEEN THE UNITED STATES
15 AND PERU.—It is the sense of the House of Representa-
16 tives that—

17 (1) the United States should expand its co-
18 operation with the Government of Peru to
19 promote—

20 (A) the strengthening of democratic insti-
21 tutions and the rule of law in Peru; and

22 (B) economic development and an im-
23 proved quality of life for citizens of both coun-
24 tries;

1 (2) the Governments of the United States and
2 Peru should act in solidarity to promote democracy
3 and respect for human rights in the Western Hemi-
4 sphere and throughout the world; and

5 (3) the Governments of the United States and
6 Peru should enhance cooperation to confront com-
7 mon threats such as corruption and trafficking in il-
8 licit narcotics and arms.

9 **SEC. 2. EARTHQUAKE OF JUNE 23, 2001, IN PERU.**

10 (a) FINDINGS.—The House of Representatives finds
11 the following:

12 (1) On the afternoon of June 23, 2001, a dev-
13 astating and deadly earthquake with a magnitude of
14 8.1 on the Richter scale struck Peru, killing at least
15 97 people, injuring thousands, and leaving thou-
16 sands more homeless and sleeping in the streets in
17 freezing temperatures.

18 (2) The earthquake has left significant damage
19 throughout southeastern Peru, including the devas-
20 tation of mountain villages, and severe damage in
21 the historic, colonial city of Arequipa.

22 (3) An aftershock of 5.7 on the Richter scale
23 has already been recorded and additional aftershocks
24 are expected to occur.

1 (4) The people of Peru have displayed strength,
2 courage, and determination to rebuild in the after-
3 math of this earthquake.

4 (5) Peru has appealed to the International
5 Committee of the Red Cross and other relief organi-
6 zations in the international community for economic
7 assistance to meet the relief and reconstruction
8 needs of Peru in the aftermath of this earthquake.

9 (6) The United States has offered technical and
10 monetary assistance to Peru through the United
11 States Agency for International Development.

12 (b) STATEMENT OF POLICY.—The House of
13 Representatives—

14 (1) expresses—

15 (A) deep sympathy to the people of Peru
16 for the tragic losses suffered as a result of the
17 earthquake of June 23, 2001; and

18 (B) support for the efforts of the people of
19 Peru to rebuild their homes and lives;

20 (2) expresses support for relief and reconstruc-
21 tion assistance to Peru provided by international re-
22 lief agencies and the international community, in-
23 cluding the United States Agency for International
24 Development;

1 (3) urges the President of the United States to
2 encourage such entities to expedite such assistance;
3 and

4 (4) encourages assistance by other countries
5 and organizations to alleviate the suffering of the
6 people of Peru and to assist them in rebuilding their
7 homes and lives.

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107TH CONGRESS
1ST SESSION

H. CON. RES. 188

Expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2001

Ms. ROS-LEHTINEN (for herself, Mr. SMITH of New Jersey, Mr. GILMAN, Mr. BURTON of Indiana, Mr. LANTOS, Mr. HOFFEL, Mr. WEXLER, Mr. FRANK, Mr. ROHRABACHER, Ms. MCKINNEY, Ms. LEE, Mr. NORWOOD, Mr. HILLIARD, Mr. RUSH, Mr. BURR of North Carolina, Mr. KING, Mr. ACKERMAN, Mr. CLAY, Mr. BARTON of Texas, Mr. ABERCROMBIE, Mr. BERMAN, Ms. BERKLEY, Mr. TANCREDO, Mr. CHABOT, Mr. SAXTON, Mr. NETHERCUTT, Mr. BENTSEN, Mr. DIAZ-BALART, Mr. CONYERS, Mr. NADLER, and Mr. TIBERI) submitted the following concurrent resolution; which was referred to the Committee on International Relations

CONCURRENT RESOLUTION

Expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners.

Whereas Falun Gong is a peaceful and nonviolent form of personal belief and practice with millions of adherents in China and elsewhere;

Whereas the Government of the People's Republic of China has forbidden Falun Gong practitioners to practice their beliefs, and has systematically attempted to eradicate the practice and those who follow it;

Whereas this policy violates China's own constitution as well as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights;

Whereas Jiang Zemin's regime has created notorious government "610" offices throughout China with the special task of overseeing the persecution of Falun Gong members through organized brainwashing, torture, and murder;

Whereas propaganda from China's state-controlled media has inundated the public in an attempt to breed hatred and discrimination;

Whereas the number of known deaths from torture has reached 253 so far, tens of thousands have been tortured while confined in labor camps, prisons, and mental hospitals, and hundreds of thousands forced to attend brainwashing classes;

Whereas official measures have been taken to conceal all atrocities, such as the immediate cremation of victims, the blocking of autopsies, and the false labeling of deaths as from suicide or natural causes;

Whereas women in particular have been the target of numerous forms of sexual violence, including rape, sexual assault, and forced abortion;

Whereas several permanent United States residents and citizens have been imprisoned, tortured, and subject to arbitrary detention; and

Whereas the campaign of persecution has been generated by the Chinese Government, carried out by government officials and state police, and permeated every village and every level of government in China: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That it is the sense of Congress that—

3 (1) the Government of the People’s Republic of
4 China should cease its persecution of Falun Gong
5 practitioners; and

6 (2) the United States Government should use
7 every appropriate public and private forum to urge
8 the Government of the People’s Republic of China—

9 (A) to release from detention all Falun
10 Gong practitioners and put an end to the prac-
11 tices of torture and other cruel, inhumane, and
12 degrading treatment against them and other
13 prisoners of conscience; and

14 (B) to abide by the International Covenant
15 on Civil and Political Rights and the Universal
16 Declaration of Human Rights by allowing
17 Falun Gong practitioners to pursue their per-
18 sonal beliefs.

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107TH CONGRESS
1ST SESSION

H. CON. RES. 89

Mourning the death of Ron Sander at the hands of terrorist kidnapers in Ecuador and welcoming the release from captivity of Arnie Alford, Steve Derry, Jason Weber, and David Bradley, and supporting efforts by the United States to combat such terrorism.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2001

Mr. WALDEN of Oregon (for himself, Mr. SKELTON, and Mrs. CUBIN) submitted the following concurrent resolution; which was referred to the Committee on International Relations

CONCURRENT RESOLUTION

Mourning the death of Ron Sander at the hands of terrorist kidnapers in Ecuador and welcoming the release from captivity of Arnie Alford, Steve Derry, Jason Weber, and David Bradley, and supporting efforts by the United States to combat such terrorism.

Whereas Ron Sander of Sunrise Beach, Missouri, one of ten men abducted from an Ecuadorian oil field on October 12, 2000, was brutally murdered by his terrorist captors on January 31, 2001;

Whereas Arnie Alford, Steve Derry, and Jason Weber, of Gold Hill, Oregon, and David Bradley, of Casper, Wyoming, were also among the ten men abducted;

Whereas the kidnapped men endured inhuman treatment at the hands of their captors, suffering from malnutrition, isolation, and physical and mental abuse;

Whereas the hostages spent 141 days in captivity before being released to Ecuadorian military authorities;

Whereas the Government of Ecuador provided invaluable assistance in seeking the safe return of the hostages; and

Whereas the employers of the hostages, Erickson Air-Crane, Schlumberger Ltd., and Helmerich & Payne, maintained a tireless commitment to their employees and their families during protracted negotiations with the terrorists: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring), That*

3 (1) the Congress welcomes the safe return of
4 American citizens Arnie Alford, Steve Derry, Jason
5 Weber, and David Bradley from captivity by terror-
6 ists in Ecuador and congratulates them for their
7 perseverance in the face of persistent and
8 unremitting adversity;

9 (2) the Congress extends its deepest sympathy
10 to the family of Ron Sander, who was killed by ter-
11 rorists in Ecuador, and salutes his steadfast courage
12 under the most difficult of circumstances;

13 (3) the Congress supports the commitment of
14 the United States to bringing the killers of Ron
15 Sanders and the kidnappers of Arnie Alford, Steve

1 Derry, Jason Weber, and David Bradley to justice;
2 and

3 (4) it is the sense of the Congress that the
4 United States must redouble its efforts to prevent
5 future kidnappings by working in concert with for-
6 eign governments to neutralize the threat rep-
7 resented by terrorist groups who perpetrate such
8 crimes.

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Chairman HYDE. Without objection, so ordered and any Member who wishes to do so will be permitted to insert statements on any of these bills into the record.

It is the Chair's intention to recess the Committee at noon and return at 2 p.m. to continue the markup and go as far as we can, but I just thought I would announce that so you could make appropriate scheduling.

Pursuant to notice, I now call up the bill H.R. 2581, the Export Administration Act of 2001, for purposes of markup. Without objection, the bill will be considered as read and open for amendment at any point, and the Chair yields himself 5 minutes for purposes of presenting a statement with regard to the consideration of this bill.

[The bill, H.R. 2581, follows:]

107TH CONGRESS
1ST SESSION

H. R. 2581

To provide authority to control exports, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2001

Mr. GILMAN introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide authority to control exports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Export Administration Act of 2001”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—GENERAL AUTHORITY

- Sec. 101. Commerce Control List.
- Sec. 102. Delegation of authority.
- Sec. 103. Public information; consultation requirements.
- Sec. 104. Right of export.
- Sec. 105. Export control advisory committees.
- Sec. 106. President's Technology Export Council.
- Sec. 107. Prohibition on charging fees.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

- Sec. 201. Authority for national security export controls.
- Sec. 202. National Security Control List.
- Sec. 203. Country tiers.
- Sec. 204. Incorporated parts and components.
- Sec. 205. Petition process for modifying export status.

Subtitle B—Foreign Availability and Mass-Market Status

- Sec. 211. Determination of foreign availability and mass-market status.
- Sec. 212. Presidential set-aside of foreign availability status determination.
- Sec. 213. Presidential set-aside of mass-market status determination.
- Sec. 214. Office of Technology Evaluation.

TITLE III—FOREIGN POLICY EXPORT CONTROLS

- Sec. 301. Authority for foreign policy export controls.
- Sec. 302. Procedures for imposing controls.
- Sec. 303. Criteria for foreign policy export controls.
- Sec. 304. Presidential report before imposition of control.
- Sec. 305. Imposition of controls.
- Sec. 306. Deferral authority.
- Sec. 307. Review, renewal, and termination.
- Sec. 308. Termination of controls under this title.
- Sec. 309. Compliance with international obligations.
- Sec. 310. Designation of countries supporting international terrorism.
- Sec. 311. Crime control instruments.

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND
INTERAGENCY DISPUTE RESOLUTION

- Sec. 401. Export license procedures.
- Sec. 402. Interagency dispute resolution process.

TITLE V—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS;
SANCTIONS; AND ENFORCEMENT

- Sec. 501. International arrangements.
- Sec. 502. Foreign boycotts.
- Sec. 503. Penalties.
- Sec. 504. Missile proliferation control violations.
- Sec. 505. Chemical and biological weapons proliferation sanctions.
- Sec. 506. Enforcement.
- Sec. 507. Administrative procedure.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 601. Export control authority and regulations.
Sec. 602. Confidentiality of information.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.
Sec. 702. Enhancement of congressional oversight of nuclear transfers to North Korea.
Sec. 703. Procedures for consideration of joint resolutions.
Sec. 704. Technical and conforming amendments.
Sec. 705. Savings provisions.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AFFILIATE.**—The term “affiliate” includes
4 both governmental entities and commercial entities
5 that are controlled in fact by the government of a
6 country.

7 (2) **CONTROL OR CONTROLLED.**—The terms
8 “control” and “controlled” mean any requirement,
9 condition, authorization, or prohibition on the export
10 or reexport of an item.

11 (3) **CONTROL LIST.**—The term “Control List”
12 means the Commerce Control List established under
13 section 101.

14 (4) **CONTROLLED COUNTRY.**—The term “con-
15 trolled country” means a country with respect to
16 which exports are controlled under section 201 or
17 301.

18 (5) **CONTROLLED ITEM.**—The term “controlled
19 item” means an item the export of which is con-
20 trolled under this Act.

1 (6) COUNTRY.—The term “country” means a
2 sovereign country or an autonomous customs terri-
3 tory.

4 (7) COUNTRY SUPPORTING INTERNATIONAL
5 TERRORISM.—The term “country supporting inter-
6 national terrorism” means a country designated by
7 the Secretary of State pursuant to section 310.

8 (8) DEPARTMENT.—The term “Department”
9 means the Department of Commerce.

10 (9) EXPORT.—

11 (A) The term “export” means—

12 (i) an actual shipment, transfer, or
13 transmission of an item out of the United
14 States;

15 (ii) a transfer to any person of an
16 item either within the United States or
17 outside of the United States with the
18 knowledge or intent that the item will be
19 shipped, transferred, or transmitted to an
20 unauthorized recipient outside the United
21 States; or

22 (iii) a transfer of an item in the
23 United States to an embassy or affiliate of
24 a country, which shall be considered an ex-
25 port to that country.

1 (B) The term includes a reexport.

2 (10) FOREIGN AVAILABILITY STATUS.—The
3 term “foreign availability status” means the status
4 described in section 211(d)(1).

5 (11) FOREIGN PERSON.—The term “foreign
6 person” means—

7 (A) an individual who is not—

8 (i) a United States citizen;

9 (ii) an alien lawfully admitted for per-
10 manent residence to the United States; or

11 (iii) a protected individual as defined
12 in section 274B(a)(3) of the Immigration
13 and Nationality Act. (8 U.S.C.
14 1324b(a)(3));

15 (B) any corporation, partnership, business
16 association, society, trust, organization, or other
17 nongovernmental entity created or organized
18 under the laws of a foreign country or that has
19 its principal place of business outside the
20 United States; and

21 (C) any governmental entity of a foreign
22 country.

23 (12) ITEM.—

24 (A) IN GENERAL.—The term “item”
25 means any good, technology, or service.

1 (B) OTHER DEFINITIONS.—In this para-
2 graph:

3 (i) GOOD.—The term “good” means
4 any article, natural or manmade substance,
5 material, supply or manufactured product,
6 including inspection and test equipment,
7 including source code, and excluding tech-
8 nical data.

9 (ii) TECHNOLOGY.—The term “tech-
10 nology” means specific information that is
11 necessary for the development, production,
12 or use of an item, and takes the form of
13 technical data or technical assistance.

14 (iii) SERVICE.—The term “service”
15 means any act of assistance, help or aid.

16 (13) MASS-MARKET STATUS.—The term “mass-
17 market status” means the status described in section
18 211(d)(2).

19 (14) MULTILATERAL EXPORT CONTROL RE-
20 GIME.—The term “multilateral export control re-
21 gime” means an international agreement or arrange-
22 ment among two or more countries, including the
23 United States, a purpose of which is to coordinate
24 national export control policies of its members re-
25 garding certain items. The term includes regimes

1 such as the Australia Group, the Wassenaar Ar-
2 rangement, the Missile Technology Control Regime
3 (MTCR), and the Nuclear Suppliers' Group Dual
4 Use Arrangement.

5 (15) NATIONAL SECURITY CONTROL LIST.—The
6 term “National Security Control List” means the
7 list established under section 202(a).

8 (16) PERSON.—The term “person” includes—

9 (A) any individual, or partnership, corpora-
10 tion, business association, society, trust, organiza-
11 tion, or any other group created or organized
12 under the laws of a country; and

13 (B) any government, or any governmental
14 entity, including any governmental entity oper-
15 ating as a business enterprise.

16 (17) REEXPORT.—The term “reexport” means
17 the shipment, transfer, transshipment, or diversion
18 of items from one foreign country to another.

19 (18) SECRETARY.—The term “Secretary”
20 means the Secretary of Commerce.

21 (19) UNITED STATES.—The term “United
22 States” means the States of the United States, the
23 District of Columbia, and any commonwealth, terri-
24 tory, dependency, or possession of the United States,
25 and includes the outer Continental Shelf, as defined

1 in section 2(a) of the Outer Continental Shelf Lands
2 Act (42 U.S.C. 1331(a)).

3 (20) UNITED STATES PERSON.—The term
4 “United States person” means—

5 (A) any United States citizen, resident, or
6 national (other than an individual resident out-
7 side the United States who is employed by a
8 person other than a United States person);

9 (B) any domestic concern (including any
10 permanent domestic establishment of any for-
11 eign concern); and

12 (C) any foreign subsidiary or affiliate (in-
13 cluding any permanent foreign establishment)
14 of any domestic concern which is controlled in
15 fact by such domestic concern, as determined
16 under regulations prescribed by the President.

17 **TITLE I—GENERAL AUTHORITY**

18 **SEC. 101. COMMERCE CONTROL LIST.**

19 (a) IN GENERAL.—Under such conditions as the Sec-
20 retary may impose, consistent with the provisions of this
21 Act, the Secretary—

22 (1) shall establish and maintain a Commerce
23 Control List (in this Act referred to as the “Control
24 List”) consisting of items the export of which are

1 subject to licensing or other authorization or re-
2 quirement; and

3 (2) may require any type of license, or other
4 authorization, including recordkeeping and report-
5 ing, appropriate to the effective and efficient imple-
6 mentation of this Act with respect to the export of
7 an item on the Control List or otherwise subject to
8 control under title II or III of this Act.

9 (b) TYPES OF LICENSE OR OTHER AUTHORIZA-
10 TION.—The types of license or other authorization re-
11 ferred to in subsection (a)(2) include the following:

12 (1) SPECIFIC EXPORTS.—A license that author-
13 izes a specific export.

14 (2) MULTIPLE EXPORTS.—A license that au-
15 thorizes multiple exports in lieu of a license for each
16 export.

17 (3) NOTIFICATION IN LIEU OF LICENSE.— A
18 notification in lieu of a license that authorizes a spe-
19 cific export or multiple exports subject to the condi-
20 tion that the exporter file with the Department ad-
21 vance notification of the intent to export in accord-
22 ance with regulations prescribed by the Secretary.

23 (4) LICENSE EXCEPTION.—Authority to export
24 an item on the Control List without prior license or
25 notification in lieu of a license.

1 (c) AFTER-MARKET SERVICE AND REPLACEMENT
2 PARTS.—A license to export an item under this Act shall
3 not be required for an exporter to provide after-market
4 service or replacement parts in order to replace on a one-
5 for-one basis parts that were in an item that was lawfully
6 exported from the United States, unless—

7 (1) the Secretary determines that such license
8 is required to export such parts; or

9 (2) the after-market service or replacement
10 parts would materially enhance the capability of an
11 item which was the basis for the item being con-
12 trolled.

13 (d) INCIDENTAL TECHNOLOGY.—A license or other
14 authorization to export an item under this Act includes
15 authorization to export technology related to the item, if
16 the level of the technology does not exceed the minimum
17 necessary to install, repair, maintain, inspect, operate, or
18 use the item.

19 (e) REGULATIONS.—The Secretary may prescribe
20 such regulations as are necessary to carry out the provi-
21 sions of this Act.

22 **SEC. 102. DELEGATION OF AUTHORITY.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b) and subject to the provisions of this Act, the President
25 may delegate the power, authority, and discretion con-

1 ferred upon the President by this Act to such depart-
2 ments, agencies, and officials of the Government as the
3 President considers appropriate.

4 (b) EXCEPTIONS.—

5 (1) DELEGATION TO APPOINTEES CONFIRMED
6 BY SENATE.—No authority delegated to the Presi-
7 dent under this Act may be delegated by the Presi-
8 dent to, or exercised by, any official of any depart-
9 ment or agency the head of which is not appointed
10 by the President, by and with the advice and consent
11 of the Senate.

12 (2) OTHER LIMITATIONS.—The President may
13 not delegate or transfer the President’s power, au-
14 thority, or discretion to overrule or modify any rec-
15 ommendation or decision made by the Secretary, the
16 Secretary of Defense, or the Secretary of State
17 under this Act.

18 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**
19 **MENTS.**

20 (a) PUBLIC INFORMATION.—The Secretary shall
21 keep the public fully informed of changes in export control
22 policy and procedures instituted in conformity with this
23 Act.

24 (b) CONSULTATION WITH PERSONS AFFECTED.—
25 The Secretary shall consult regularly with representatives

1 of a broad spectrum of enterprises, labor organizations,
2 and citizens interested in or affected by export controls
3 in order to obtain their views on United States export con-
4 trol policy and the foreign availability or mass-market sta-
5 tus of controlled items.

6 **SEC. 104. RIGHT OF EXPORT.**

7 No license or other authorization to export may be
8 required under this Act, or under regulations issued under
9 this Act, except to carry out the provisions of this Act.

10 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

11 (a) APPOINTMENT.—Upon the Secretary’s own initia-
12 tive or upon the written request of representatives of a
13 substantial segment of any industry which produces any
14 items subject to export controls under this Act or being
15 considered for such controls, the Secretary may appoint
16 export control advisory committees with respect to any
17 such items. Each such committee shall consist of rep-
18 resentatives of United States industry and Government of-
19 ficials, including officials from the Departments of Com-
20 merce, Defense, and State, and other appropriate depart-
21 ments and agencies of the Government. The Secretary
22 shall permit the widest possible participation by the busi-
23 ness community on the export control advisory commit-
24 tees.

25 (b) FUNCTIONS.—

1 (1) IN GENERAL.—Export control advisory
2 committees appointed under subsection (a) shall ad-
3 vise and assist the Secretary, and any other depart-
4 ment, agency, or official of the Government carrying
5 out functions under this Act, on actions (including
6 all aspects of controls imposed or proposed) designed
7 to carry out the provisions of this Act concerning the
8 items with respect to which such export control advi-
9 sory committees were appointed.

10 (2) OTHER CONSULTATIONS.—Nothing in para-
11 graph (1) shall prevent the United States Govern-
12 ment from consulting, at any time, with any person
13 representing an industry or the general public, re-
14 gardless of whether such person is a member of an
15 export control advisory committee. Members of the
16 public shall be given a reasonable opportunity, pur-
17 suant to regulations prescribed by the Secretary, to
18 present information to such committees.

19 (c) REIMBURSEMENT OF EXPENSES.—Upon the re-
20 quest of any member of any export control advisory com-
21 mittee appointed under subsection (a), the Secretary may,
22 if the Secretary determines it to be appropriate, reimburse
23 such member for travel, subsistence, and other necessary
24 expenses incurred by such member in connection with the
25 duties of such member.

1 (d) CHAIRPERSON.—Each export control advisory
2 committee appointed under subsection (a) shall elect a
3 chairperson, and shall meet at least every 3 months at
4 the call of the chairperson, unless the chairperson deter-
5 mines, in consultation with the other members of the com-
6 mittee, that such a meeting is not necessary to achieve
7 the purposes of this section. Each such committee shall
8 be terminated after a period of 2 years, unless extended
9 by the Secretary for additional periods of 2 years each.
10 The Secretary shall consult with each such committee on
11 such termination or extension of that committee.

12 (e) ACCESS TO INFORMATION.—To facilitate the
13 work of the export control advisory committees appointed
14 under subsection (a), the Secretary, in conjunction with
15 other departments and agencies participating in the ad-
16 ministration of this Act, shall disclose to each such com-
17 mittee adequate information, consistent with national se-
18 curity and intelligence sources and methods, pertaining to
19 the reasons for the export controls which are in effect or
20 contemplated for the items or policies for which that com-
21 mittee furnishes advice. Information provided by the ex-
22 port control advisory committees shall not be subject to
23 disclosure under section 552 of title 5, United States
24 Code, and such information shall not be published or dis-

1 closed unless the Secretary determines that the with-
2 holding thereof is contrary to the national interest.

3 **SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.**

4 The President may establish a President's Tech-
5 nology Export Council to advise the President on the im-
6 plementation, operation, and effectiveness of this Act.

7 **SEC. 107. PROHIBITION ON CHARGING FEES.**

8 No fee may be charged in connection with the submis-
9 sion or processing of an application for an export license
10 under this Act.

11 **TITLE II—NATIONAL SECURITY**
12 **EXPORT CONTROLS**
13 **Subtitle A—Authority and**
14 **Procedures**

15 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**
16 **CONTROLS.**

17 (a) AUTHORITY.—

18 (1) IN GENERAL.—In order to carry out the
19 purposes set forth in subsection (b), the President
20 may, in accordance with the provisions of this Act,
21 prohibit, curtail, or require a license, or other au-
22 thorization for the export of any item subject to the
23 jurisdiction of the United States or exported by any
24 person subject to the jurisdiction of the United
25 States. The President may also require record-

1 keeping and reporting with respect to the export of
2 such item.

3 (2) EXERCISE OF AUTHORITY.—The authority
4 contained in this subsection shall be exercised by the
5 Secretary, in consultation with the Secretary of De-
6 fense, the intelligence agencies, and such other de-
7 partments and agencies as the Secretary considers
8 appropriate.

9 (b) PURPOSES.—The purposes of national security
10 export controls are the following:

11 (1) To restrict the export of items that would
12 contribute to the military potential of countries so as
13 to prove detrimental to the national security of the
14 United States, its allies or countries sharing com-
15 mon strategic objectives with the United States.

16 (2) To stem the proliferation of weapons of
17 mass destruction, and the means to deliver them,
18 and other significant military capabilities by—

19 (A) leading international efforts to control
20 the proliferation of chemical and biological
21 weapons, nuclear explosive devices, missile deliv-
22 ery systems, key-enabling technologies, and
23 other significant military capabilities;

24 (B) controlling involvement of United
25 States persons in, and contributions by United

1 States persons to, foreign programs intended to
2 develop weapons of mass destruction, missiles,
3 and other significant military capabilities, and
4 the means to design, test, develop, produce,
5 stockpile, or use them; and

6 (C) implementing international treaties or
7 other agreements or arrangements concerning
8 controls on exports of designated items, reports
9 on the production, processing, consumption,
10 and exports and imports of such items, and
11 compliance with verification programs.

12 (3) To deter acts of international terrorism.

13 (c) END USE AND END USER CONTROLS.—Notwith-
14 standing any other provision of this title, controls may be
15 imposed, based on the end use or end user, on the export
16 of any item, that could contribute to the proliferation of
17 weapons of mass destruction or the means to deliver them.

18 (d) ENHANCED CONTROLS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provisions of this title, the President may determine
21 that applying the provisions of section 204 or 211
22 with respect to an item on the National Security
23 Control List would constitute a significant threat to
24 the national security of the United States and that
25 such item requires enhanced control. If the Presi-

1 dent determines that enhanced control should apply
2 to such item, the item may be excluded from the
3 provisions of section 204, section 211, or both, until
4 such time as the President shall determine that such
5 enhanced control should no longer apply to such
6 item. The President may not delegate the authority
7 provided for in this subsection.

8 (2) REPORT TO CONGRESS.—The President
9 shall promptly report any determination described in
10 paragraph (1), along with the specific reasons for
11 the determination, to the Committee on Banking,
12 Housing, and Urban Affairs of the Senate and the
13 Committee on International Relations of the House
14 of Representatives.

15 **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

16 (a) ESTABLISHMENT OF LIST.—

17 (1) ESTABLISHMENT.—The Secretary shall es-
18 tablish and maintain a National Security Control
19 List as part of the Control List.

20 (2) CONTENTS.—The National Security Control
21 List shall be composed of a list of items the export
22 of which is controlled for national security purposes
23 under this title.

24 (3) IDENTIFICATION OF ITEMS FOR NATIONAL
25 SECURITY CONTROL LIST.—The Secretary, with the

1 concurrence of the Secretary of Defense and in con-
2 sultation with the head of any other department or
3 agency of the United States that the Secretary con-
4 siders appropriate, shall identify the items to be in-
5 cluded on the National Security Control List pro-
6 vided that the National Security Control List shall,
7 on the date of enactment of this Act, include all of
8 the items on the Commerce Control List controlled
9 on the day before the date of enactment of this Act
10 to protect the national security of the United States,
11 to prevent the proliferation of weapons of mass de-
12 struction and the means to deliver them, and to
13 deter acts of international terrorism. The Secretary
14 shall review on a continuing basis and, with the con-
15 currence of the Secretary of Defense and in con-
16 sultation with the head of any other department or
17 agency of the United States that the Secretary con-
18 siders appropriate, adjust the National Security
19 Control List to add items that require control under
20 this section and to remove items that no longer war-
21 rant control under this section.

22 (b) RISK ASSESSMENT.—

23 (1) REQUIREMENT.—In establishing and main-
24 taining the National Security Control List, the risk
25 factors set forth in paragraph (2) shall be consid-

1 ered, weighing national security concerns and eco-
2 nomic costs.

3 (2) RISK FACTORS.—The risk factors referred
4 to in paragraph (1), with respect to each item, are
5 as follows:

6 (A) The characteristics of the item.

7 (B) The threat, if any, to the United
8 States or the national security interest of the
9 United States from the misuse or diversion of
10 such item.

11 (C) The effectiveness of controlling the
12 item for national security purposes of the
13 United States, taking into account mass-market
14 status, foreign availability, and other relevant
15 factors.

16 (D) The threat to the national security in-
17 terests of the United States if the item is not
18 controlled.

19 (E) Any other appropriate risk factors.

20 (c) REPORT ON CONTROL LIST.—Not later than 90
21 days after the date of enactment of this Act, the Secretary
22 shall submit a report to Congress which lists all items on
23 the Commerce Control List controlled on the day before
24 the date of enactment of this Act to protect the national
25 security of the United States, to prevent the proliferation

1 of weapons of mass destruction and the means to deliver
2 them, and to deter acts of international terrorism, not in-
3 cluded on the National Security Control List pursuant to
4 the provisions of this Act.

5 **SEC. 203. COUNTRY TIERS.**

6 (a) IN GENERAL.—

7 (1) ESTABLISHMENT AND ASSIGNMENT.—In
8 administering export controls for national security
9 purposes under this title, the President shall, not
10 later than 120 days after the date of enactment of
11 this Act—

12 (A) establish and maintain a country
13 tiering system in accordance with subsection
14 (b); and

15 (B) based on the assessments required
16 under subsection (c), assign each country to an
17 appropriate tier for each item or group of items
18 the export of which is controlled for national se-
19 curity purposes under this title.

20 (2) CONSULTATION.—The establishment and
21 assignment of country tiers under this section shall
22 be made after consultation with the Secretary, the
23 Secretary of Defense, the Secretary of State, the in-
24 telligence agencies, and such other departments and
25 agencies as the President considers appropriate.

1 (3) REDETERMINATION AND REVIEW OF AS-
2 SIGNMENTS.—The President may redetermine the
3 assignment of a country to a particular tier at any
4 time and shall review and, as the President con-
5 siders appropriate, reassign country tiers on an on-
6 going basis. The Secretary shall provide notice of
7 any such reassignment to the Committee on Bank-
8 ing, Housing, and Urban Affairs of the Senate and
9 the Committee on International Relations of the
10 House of Representatives.

11 (4) EFFECTIVE DATE OF TIER ASSIGNMENT.—
12 An assignment of a country to a particular tier shall
13 take effect on the date on which notice of the assign-
14 ment is published in the Federal Register.

15 (b) TIERS.—

16 (1) IN GENERAL.—The President shall establish
17 a country tiering system consisting of not less than
18 3 tiers for purposes of this section.

19 (2) RANGE.—Countries that represent the low-
20 est risk of diversion or misuse of an item on the Na-
21 tional Security Control List shall be assigned to the
22 lowest tier. Countries that represent the highest risk
23 of diversion or misuse of an item on the National
24 Security Control List shall be assigned to the high-
25 est tier.

1 (3) OTHER COUNTRIES.—Countries that fall be-
2 tween the lowest and highest risk to the national se-
3 curity interest of the United States with respect to
4 the risk of diversion or misuse of an item on the Na-
5 tional Security Control List shall be assigned to a
6 tier other than the lowest or highest tier, based on
7 the assessments required under subsection (c).

8 (c) ASSESSMENTS.—The President shall make an as-
9 sessment of each country in assigning a country tier tak-
10 ing into consideration risk factors including the following:

11 (1) The present and potential relationship of
12 the country with the United States.

13 (2) The present and potential relationship of
14 the country with countries friendly to the United
15 States and with countries hostile to the United
16 States.

17 (3) The country’s capabilities regarding chem-
18 ical, biological, and nuclear weapons and the coun-
19 try’s membership in, and level of compliance with,
20 relevant multilateral export control regimes.

21 (4) The country’s capabilities regarding missile
22 systems and the country’s membership in, and level
23 of compliance with, relevant multilateral export con-
24 trol regimes.

1 (5) Whether the country, if a NATO or major
2 non-NATO ally with whom the United States has
3 entered into a free trade agreement as of January
4 1, 1986, controls exports in accordance with the cri-
5 teria and standards of a multilateral export control
6 regime as defined in section 2(14) pursuant to an
7 international agreement to which the United States
8 is a party.

9 (6) The country's other military capabilities
10 and the potential threat posed by the country to the
11 United States or its allies.

12 (7) The effectiveness of the country's export
13 control system.

14 (8) The level of the country's cooperation with
15 United States export control enforcement and other
16 efforts.

17 (9) The risk of export diversion by the country
18 to a higher tier country.

19 (10) The designation of the country as a coun-
20 try supporting international terrorism under section
21 310.

22 (d) TIER APPLICATION.—The country tiering system
23 shall be used in the determination of license requirements
24 pursuant to section 201(a)(1).

1 **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

2 (a) EXPORT OF ITEMS CONTAINING CONTROLLED
3 PARTS AND COMPONENTS.—Controls may not be imposed
4 under this title or any other provision of law on an item
5 solely because the item contains parts or components sub-
6 ject to export controls under this title, if the parts or
7 components—

8 (1) are essential to the functioning of the item,

9 (2) are customarily included in sales of the item
10 in countries other than controlled countries, and

11 (3) comprise 25 percent or less of the total
12 value of the item,

13 unless the item itself, if exported, would by virtue of the
14 functional characteristics of the item as a whole make a
15 significant contribution to the military or proliferation po-
16 tential of a controlled country or end user which would
17 prove detrimental to the national security of the United
18 States, or unless failure to control the item would be con-
19 trary to the provisions of section 201(c), section 201(d),
20 or section 309 of this Act.

21 (b) REEXPORTS OF FOREIGN-MADE ITEMS INCOR-
22 PORATING UNITED STATES CONTROLLED CONTENT.—

23 (1) IN GENERAL.—No authority or permission
24 may be required under this title to reexport to a
25 country an item that is produced in a country other
26 than the United States and incorporates parts or

1 components that are subject to the jurisdiction of
2 the United States, if the value of the controlled
3 United States content of the item produced in such
4 other country is 25 percent or less of the total value
5 of the item; except that in the case of reexports of
6 an item to a country designated as a country sup-
7 porting international terrorism pursuant to section
8 310, controls may be maintained if the value of the
9 controlled United States content is more than 10
10 percent of the total value of the item.

11 (2) DEFINITION OF CONTROLLED UNITED
12 STATES CONTENT.—For purposes of this paragraph,
13 the term “controlled United States content” of an
14 item means those parts or components that—

15 (A) are subject to the jurisdiction of the
16 United States;

17 (B) are incorporated into the item; and

18 (C) would, at the time of the reexport, re-
19 quire a license under this title if exported from
20 the United States to a country to which the
21 item is to be reexported.

22 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**
23 **STATUS.**

24 (a) ESTABLISHMENT.—The Secretary shall establish
25 a process for interested persons to petition the Secretary

1 to change the status of an item on the National Security
2 Control List.

3 (b) EVALUATIONS AND DETERMINATIONS.—Evaluations and determinations with respect to a petition filed
4 pursuant to this section shall be made in accordance with
5 section 202.
6

7 **Subtitle B—Foreign Availability**
8 **and Mass-Market Status**

9 **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND**
10 **MASS-MARKET STATUS.**

11 (a) IN GENERAL.—The Secretary shall—

12 (1) on a continuing basis,

13 (2) upon a request from the Office of Tech-
14 nology Evaluation, or

15 (3) upon receipt of a petition filed by an inter-
16 ested party,

17 review and determine the foreign availability and the
18 mass-market status of any item the export of which is con-
19 trolled under this title.

20 (b) PETITION AND CONSULTATION.—

21 (1) IN GENERAL.—The Secretary shall establish
22 a process for an interested party to petition the Sec-
23 retary for a determination that an item has a for-
24 eign availability or mass-market status. In evalu-
25 ating and making a determination with respect to a

1 petition filed under this section, the Secretary shall
2 consult with the Secretary of Defense, Secretary of
3 State, and other appropriate Government agencies
4 and with the Office of Technology Evaluation (estab-
5 lished pursuant to section 214).

6 (2) TIME FOR MAKING DETERMINATION.—The
7 Secretary shall, within 6 months after receiving a
8 petition described in subsection (a)(3), determine
9 whether the item that is the subject of the petition
10 has foreign availability or mass-market status and
11 shall notify the petitioner of the determination.

12 (c) RESULT OF DETERMINATION.—In any case in
13 which the Secretary determines, in accordance with proce-
14 dures and criteria which the Secretary shall by regulation
15 establish, that an item described in subsection (a) has—

16 (1) a foreign availability status, or

17 (2) a mass-market status,

18 the Secretary shall notify the President (and other appro-
19 priate departments and agencies) and publish the notice
20 of the determination in the Federal Register. The Sec-
21 retary's determination shall become final 30 days after the
22 date the notice is published, the item shall be removed
23 from the National Security Control List, and a license or
24 other authorization shall not be required under this title
25 with respect to the item, unless the President makes a

1 determination described in section 212 or 213, or takes
2 action under section 309, with respect to the item in that
3 30-day period.

4 (d) CRITERIA FOR DETERMINING FOREIGN AVAIL-
5 ABILITY AND MASS-MARKET STATUS.—

6 (1) FOREIGN AVAILABILITY STATUS.—The Sec-
7 retary shall determine that an item has foreign
8 availability status under this subtitle, if the item (or
9 a substantially identical or directly competitive
10 item)—

11 (A) is available to controlled countries
12 from sources outside the United States, includ-
13 ing countries that participate with the United
14 States in multilateral export controls;

15 (B) can be acquired at a price that is not
16 excessive when compared to the price at which
17 a controlled country could acquire such item
18 from sources within the United States in the
19 absence of export controls; and

20 (C) is available in sufficient quantity so
21 that the requirement of a license or other au-
22 thorization with respect to the export of such
23 item is or would be ineffective.

24 (2) MASS-MARKET STATUS.—

1 (A) IN GENERAL.—In determining whether
2 an item has mass-market status under this sub-
3 title, the Secretary shall consider the following
4 criteria with respect to the item (or a substan-
5 tially identical or directly competitive item):

6 (i) The production and availability for
7 sale in a large volume to multiple potential
8 purchasers.

9 (ii) The widespread distribution
10 through normal commercial channels, such
11 as retail stores, direct marketing cata-
12 logues, electronic commerce, and other
13 channels.

14 (iii) The conduciveness to shipment
15 and delivery by generally accepted commer-
16 cial means of transport.

17 (iv) The use for the item's normal in-
18 tended purpose without substantial and
19 specialized service provided by the manu-
20 facturer, distributor, or other third party.

21 (B) DETERMINATION BY SECRETARY.—If
22 the Secretary finds that the item (or a substan-
23 tially identical or directly competitive item)
24 meets the criteria set forth in subparagraph

1 (A), the Secretary shall determine that the item
2 has mass-market status.

3 (3) SPECIAL RULES.—For purposes of this
4 subtitle—

5 (A) SUBSTANTIALLY IDENTICAL ITEM.—
6 The determination of whether an item in rela-
7 tion to another item is a substantially identical
8 item shall include a fair assessment of end-uses,
9 the properties, nature, and quality of the item.

10 (B) DIRECTLY COMPETITIVE ITEM.—

11 (i) IN GENERAL.—The determination
12 of whether an item in relation to another
13 item is a directly competitive item shall in-
14 clude a fair assessment of whether the
15 item, although not substantially identical
16 in its intrinsic or inherent characteristics,
17 is substantially equivalent for commercial
18 purposes and may be adapted for substan-
19 tially the same uses.

20 (ii) EXCEPTION.—An item is not di-
21 rectly competitive with a controlled item if
22 the item is substantially inferior to the
23 controlled item with respect to characteris-
24 ties that resulted in the export of the item
25 being controlled.

1 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**
2 **ABILITY STATUS DETERMINATION.**

3 (a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

4 (1) GENERAL CRITERIA.—

5 (A) IN GENERAL.—If the President deter-
6 mines that—

7 (i) decontrolling or failing to control
8 an item constitutes a threat to the national
9 security of the United States, and export
10 controls on the item would advance the na-
11 tional security interests of the United
12 States,

13 (ii) there is a high probability that the
14 foreign availability of an item will be elimi-
15 nated through international negotiations
16 within a reasonable period of time taking
17 into account the characteristics of the
18 item, or

19 (iii) United States controls on the
20 item have been imposed under section 309,
21 the President may set aside the Secretary's de-
22 termination of foreign availability status with
23 respect to the item.

24 (B) NONDELEGATION.—The President
25 may not delegate the authority provided for in
26 this paragraph.

1 (2) REPORT TO CONGRESS.—The President
2 shall promptly—

3 (A) report any set-aside determination de-
4 scribed in paragraph (1), along with the specific
5 reasons for the determination, to the Committee
6 on Banking, Housing, and Urban Affairs of the
7 Senate and the Committee on International Re-
8 lations of the House of Representatives; and

9 (B) publish the determination in the Fed-
10 eral Register.

11 (b) PRESIDENTIAL ACTION IN CASE OF SET-
12 ASIDE.—

13 (1) IN GENERAL.—

14 (A) NEGOTIATIONS.—In any case in which
15 export controls are maintained on an item be-
16 cause the President has made a determination
17 under subsection (a), the President shall ac-
18 tively pursue negotiations with the governments
19 of the appropriate foreign countries for the pur-
20 pose of eliminating such availability.

21 (B) REPORT TO CONGRESS.—Not later
22 than the date the President begins negotiations,
23 the President shall notify in writing the Com-
24 mittee on Banking, Housing, and Urban Affairs
25 of the Senate and the Committee on Inter-

1 national Relations of the House of Representa-
2 tives that the President has begun such nego-
3 tiations and why the President believes it is im-
4 portant to the national security that export con-
5 trols on the item involved be maintained.

6 (2) PERIODIC REVIEW OF DETERMINATION.—
7 The President shall review a determination described
8 in subsection (a) at least every 6 months. Promptly
9 after each review is completed, the Secretary shall
10 submit to the committees of Congress referred to in
11 paragraph (1)(B) a report on the results of the re-
12 view, together with the status of international nego-
13 tiations to eliminate the foreign availability of the
14 item.

15 (3) EXPIRATION OF PRESIDENTIAL SET-
16 ASIDE.—A determination by the President described
17 in subsection (a)(1)(A) (i) or (ii) shall cease to apply
18 with respect to an item on the earlier of—

19 (A) the date that is 6 months after the date
20 on which the determination is made under sub-
21 section (a), if the President has not commenced
22 international negotiations to eliminate the for-
23 eign availability of the item within that 6-month
24 period;

1 (B) the date on which the negotiations de-
2 scribed in paragraph (1) have terminated with-
3 out achieving an agreement to eliminate foreign
4 availability;

5 (C) the date on which the President deter-
6 mines that there is not a high probability of
7 eliminating foreign availability of the item
8 through negotiation; or

9 (D) the date that is 18 months after the
10 date on which the determination described in
11 subsection (a)(1)(A) (i) or (ii) is made if the
12 President has been unable to achieve an agree-
13 ment to eliminate foreign availability within
14 that 18-month period.

15 (4) ACTION ON EXPIRATION OF PRESIDENTIAL
16 SET-ASIDE.—Upon the expiration of a Presidential
17 set-aside under paragraph (3) with respect to an
18 item, the Secretary shall not require a license or
19 other authorization to export the item.

20 **SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-**
21 **TUS DETERMINATION.**

22 (a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

23 (1) GENERAL CRITERIA.—If the President de-
24 termines that—

1 (A)(i) decontrolling or failing to control an
2 item constitutes a serious threat to the national
3 security of the United States, and

4 (ii) export controls on the item would ad-
5 vance the national security interests of the
6 United States, or

7 (B) United States controls on the item
8 have been imposed under section 309,
9 the President may set aside the Secretary's deter-
10 mination of mass-market status with respect to the
11 item.

12 (2) NONDELEGATION.—The President may not
13 delegate the authority provided for in this sub-
14 section.

15 (b) PRESIDENTIAL ACTION IN CASE OF SET-
16 ASIDE.—

17 (1) IN GENERAL.—In any case in which export
18 controls are maintained on an item because the
19 President has made a determination under sub-
20 section (a), the President shall promptly report the
21 determination, along with the specific reasons for
22 the determination, to the Committee on Banking,
23 Housing, and Urban Affairs of the Senate and the
24 Committee on International Relations of the House
25 of Representatives, and shall publish notice of the

1 determination in the Federal Register not later than
2 30 days after the Secretary publishes notice of the
3 Secretary's determination that an item has mass-
4 market status.

5 (2) PERIODIC REVIEW OF DETERMINATION.—
6 The President shall review a determination made
7 under subsection (a) at least every 6 months.
8 Promptly after each review is completed, the Sec-
9 retary shall submit a report on the results of the re-
10 view to the Committee on Banking, Housing, and
11 Urban Affairs of the Senate and the Committee on
12 International Relations of the House of Representa-
13 tives.

14 **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

15 (a) IN GENERAL.—

16 (1) ESTABLISHMENT OF OFFICE.—The Sec-
17 retary shall establish in the Department of Com-
18 merce an Office of Technology Evaluation (in this
19 section referred to as the “Office”), which shall be
20 under the direction of the Secretary. The Office
21 shall be responsible for gathering, coordinating, and
22 analyzing all the necessary information in order for
23 the Secretary to make determinations of foreign
24 availability and mass-market status under this Act.

25 (2) STAFF.—

1 (A) IN GENERAL.—The Secretary shall en-
2 sure that the Office include persons to carry
3 out the responsibilities set forth in subsection
4 (b) of this section that have training, expertise,
5 and experience in—

- 6 (i) economic analysis;
7 (ii) the defense industrial base;
8 (iii) technological developments; and
9 (iv) national security and foreign pol-
10 icy export controls.

11 (B) DETAILEES.—In addition to employees
12 of the Department of Commerce, the Secretary
13 may accept on nonreimbursable detail to the
14 Office, employees of the Departments of De-
15 fense, State, and Energy and other departments
16 and agencies as appropriate.

17 (b) RESPONSIBILITIES.—The Office shall be respon-
18 sible for—

19 (1) conducting foreign availability assessments
20 to determine whether a controlled item is available
21 to controlled countries and whether requiring a li-
22 cense, or denial of a license for the export of such
23 item, is or would be ineffective;

24 (2) conducting mass-market assessments to de-
25 termine whether a controlled item is available to

1 controlled countries because of the mass-market sta-
2 tus of the item;

3 (3) monitoring and evaluating worldwide tech-
4 nological developments in industry sectors critical to
5 the national security interests of the United States
6 to determine foreign availability and mass-market
7 status of controlled items;

8 (4) monitoring and evaluating multilateral ex-
9 port control regimes and foreign government export
10 control policies and practices that affect the national
11 security interests of the United States;

12 (5) conducting assessments of United States in-
13 dustrial sectors critical to the United States defense
14 industrial base and how the sectors are affected by
15 technological developments, technology transfers,
16 and foreign competition; and

17 (6) conducting assessments of the impact of
18 United States export control policies on—

19 (A) United States industrial sectors critical
20 to the national security interests of the United
21 States; and

22 (B) the United States economy in general.

23 (c) REPORTS TO CONGRESS.—The Secretary shall
24 make available to the Committee on International Rela-
25 tions of the House of Representatives and the Committee

1 on Banking, Housing, and Urban Affairs of the Senate
2 as part of the Secretary's annual report required under
3 section 701 information on the operations of the Office,
4 and on improvements in the Government's ability to assess
5 foreign availability and mass-market status, during the
6 fiscal year preceding the report, including information on
7 the training of personnel, and the use of Commercial Serv-
8 ice Officers of the United States and Foreign Commercial
9 Service to assist in making determinations. The informa-
10 tion shall also include a description of determinations
11 made under this Act during the preceding fiscal year that
12 foreign availability or mass-market status did or did not
13 exist (as the case may be), together with an explanation
14 of the determinations.

15 (d) SHARING OF INFORMATION.—Each department
16 or agency of the United States, including any intelligence
17 agency, and all contractors with any such department or
18 agency, shall, consistent with the need to protect intel-
19 ligence sources and methods, furnish information to the
20 Office concerning foreign availability and the mass-market
21 status of items subject to export controls under this Act.

1 **TITLE III—FOREIGN POLICY**
2 **EXPORT CONTROLS**

3 **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**
4 **TROLS.**

5 (a) **AUTHORITY.**—

6 (1) **IN GENERAL.**—In order to carry out the
7 purposes set forth in subsection (b), the President
8 may, in accordance with the provisions of this Act,
9 prohibit, curtail, or require a license, other author-
10 ization, recordkeeping, or reporting for the export of
11 any item subject to the jurisdiction of the United
12 States or exported by any person subject to the ju-
13 risdiction of the United States.

14 (2) **EXERCISE OF AUTHORITY.**—The authority
15 contained in this subsection shall be exercised by the
16 Secretary, in consultation with the Secretary of
17 State and such other departments and agencies as
18 the Secretary considers appropriate.

19 (b) **PURPOSES.**—The purposes of foreign policy ex-
20 port controls are the following:

21 (1) To promote the foreign policy objectives of
22 the United States, consistent with the purposes of
23 this section and the provisions of this Act.

24 (2) To promote international peace, stability,
25 and respect for fundamental human rights.

1 (3) To use export controls to deter and punish
2 acts of international terrorism and to encourage
3 other countries to take immediate steps to prevent
4 the use of their territories or resources to aid, en-
5 courage, or give sanctuary to those persons involved
6 in directing, supporting, or participating in acts of
7 international terrorism.

8 (c) FOREIGN PRODUCTS.—No authority or permis-
9 sion may be required under this title to reexport to a coun-
10 try an item that is produced in a country other than the
11 United States and incorporates parts or components that
12 are subject to the jurisdiction of the United States, except
13 that in the case of reexports of an item to a country des-
14 ignated as a country supporting international terrorism
15 pursuant to section 310, controls may be maintained if
16 the value of the controlled United States content is more
17 than 10 percent of the value of the item.

18 (d) CONTRACT SANCTITY.—

19 (1) IN GENERAL.—The President may not pro-
20 hibit the export of any item under this title if that
21 item is to be exported—

22 (A) in performance of a binding contract,
23 agreement, or other contractual commitment
24 entered into before the date on which the Presi-
25 dent reports to Congress the President's inten-

1 tion to impose controls on that item under this
2 title; or

3 (B) under a license or other authorization
4 issued under this Act before the earlier of the
5 date on which the control is initially imposed or
6 the date on which the President reports to Con-
7 gress the President's intention to impose con-
8 trols under this title.

9 (2) EXCEPTION.—The prohibition contained in
10 paragraph (1) shall not apply in any case in which
11 the President determines and certifies to the Com-
12 mittee on Banking, Housing, and Urban Affairs of
13 the Senate and the Committee on International Re-
14 lations of the House of Representatives that—

15 (A) there is a serious threat to a foreign
16 policy interest of the United States;

17 (B) the prohibition of exports under each
18 binding contract, agreement, commitment, li-
19 cense, or authorization will be instrumental in
20 remedying the situation posing the serious
21 threat; and

22 (C) the export controls will be in effect
23 only as long as the serious threat exists.

24 **SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.**

25 (a) NOTICE.—

1 (1) INTENT TO IMPOSE FOREIGN POLICY EX-
2 PORT CONTROL.—Except as provided in section 306,
3 not later than 45 days before imposing or imple-
4 menting an export control under this title, the Presi-
5 dent shall publish in the Federal Register—

6 (A) a notice of intent to do so; and

7 (B) provide for a period of not less than
8 30 days for any interested person to submit
9 comments on the export control proposed under
10 this title.

11 (2) PURPOSES OF NOTICE.—The purposes of
12 the notice are—

13 (A) to provide an opportunity for the for-
14 mulation of an effective export control policy
15 under this title that advances United States
16 economic and foreign policy interests; and

17 (B) to provide an opportunity for negotia-
18 tions to achieve the purposes set forth in sec-
19 tion 301(b).

20 (b) NEGOTIATIONS.—During the 45-day period that
21 begins on the date of notice described in subsection (a),
22 the President may negotiate with the government of the
23 foreign country against which the export control is pro-
24 posed in order to resolve the reasons underlying the pro-
25 posed export control.

1 (c) CONSULTATION.—

2 (1) REQUIREMENT.—The President shall con-
3 sult with the Committee on Banking, Housing, and
4 Urban Affairs of the Senate and the Committee on
5 International Relations of the House of Representa-
6 tives regarding any export control proposed under
7 this title and the efforts to achieve or increase multi-
8 lateral cooperation on the issues or problems under-
9 lying the proposed export control.

10 (2) CLASSIFIED CONSULTATION.—The con-
11 sultations described in paragraph (1) may be con-
12 ducted on a classified basis if the Secretary con-
13 siders it necessary.

14 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
15 **TROLS.**

16 Each export control imposed by the President under
17 this title shall—

18 (1) have clearly stated and specific United
19 States foreign policy objectives;

20 (2) have objective standards for evaluating the
21 success or failure of the export control;

22 (3) include an assessment by the President
23 that—

1 (A) the export control is likely to achieve
2 such objectives and the expected time for
3 achieving the objectives; and

4 (B) the achievement of the objectives of
5 the export control outweighs any potential costs
6 of the export control to other United States
7 economic, foreign policy, humanitarian, or na-
8 tional security interests;

9 (4) be targeted narrowly; and

10 (5) seek to minimize any adverse impact on the
11 humanitarian activities of United States and foreign
12 nongovernmental organizations in the country sub-
13 ject to the export control.

14 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**
15 **CONTROL.**

16 (a) REQUIREMENT.—Before imposing an export con-
17 trol under this title, the President shall submit to the
18 Committee on Banking, Housing, and Urban Affairs of
19 the Senate and the Committee on International Relations
20 of the House of Representatives a report on the proposed
21 export control. The report may be provided on a classified
22 basis if the Secretary considers it necessary.

23 (b) CONTENT.—The report shall contain a descrip-
24 tion and assessment of each of the criteria described in

1 section 303. In addition, the report shall contain a descrip-
2 tion and assessment of—

3 (1) any diplomatic and other steps that the
4 United States has taken to accomplish the intended
5 objective of the proposed export control;

6 (2) unilateral export controls imposed, and
7 other measures taken, by other countries to achieve
8 the intended objective of the proposed export con-
9 trol;

10 (3) the likelihood of multilateral adoption of
11 comparable export controls;

12 (4) alternative measures to promote the same
13 objectives and the likelihood of their potential suc-
14 cess;

15 (5) any United States obligations under inter-
16 national trade agreements, treaties, or other inter-
17 national arrangements, with which the proposed ex-
18 port control may conflict;

19 (6) the likelihood that the proposed export con-
20 trol could lead to retaliation against United States
21 interests;

22 (7) the likely economic impact of the proposed
23 export control on the United States economy, United
24 States international trade and investment, and

1 United States agricultural interests, commercial in-
2 terests, and employment; and

3 (8) a conclusion that the probable achievement
4 of the objectives of the proposed export control out-
5 weighs any likely costs to United States economic,
6 foreign policy, humanitarian, or national security in-
7 terests, including any potential harm to the United
8 States agricultural and business firms and to the
9 international reputation of the United States as a
10 reliable supplier of goods, services, or technology.

11 **SEC. 305. IMPOSITION OF CONTROLS.**

12 The President may impose an export control under
13 this title after the submission of the report required under
14 section 304 and publication in the Federal Register of a
15 notice of the imposition of the export control.

16 **SEC. 306. DEFERRAL AUTHORITY.**

17 (a) **AUTHORITY.**—The President may defer compli-
18 ance with any requirement contained in section 302(a),
19 304, or 305 in the case of a proposed export control if—

20 (1) the President determines that a deferral of
21 compliance with the requirement is in the national
22 interest of the United States; and

23 (2) the requirement is satisfied not later than
24 60 days after the date on which the export control
25 is imposed under this title.

1 (b) TERMINATION OF CONTROL.—An export control
2 with respect to which a deferral has been made under sub-
3 section (a) shall terminate 60 days after the date the ex-
4 port control is imposed unless all requirements have been
5 satisfied before the expiration of the 60-day period.

6 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

7 (a) RENEWAL AND TERMINATION.—

8 (1) IN GENERAL.—Any export control imposed
9 under this title shall terminate on March 31 of each
10 renewal year unless the President renews the export
11 control on or before such date. For purposes of this
12 section, the term “renewal year” means 2003 and
13 every 2 years thereafter.

14 (2) EXCEPTION.—This section shall not apply
15 to an export control imposed under this title that—

16 (A) is required by law;

17 (B) is targeted against any country des-
18 ignated as a country supporting international
19 terrorism pursuant to section 310; or

20 (C) has been in effect for less than 1 year
21 as of February 1 of a renewal year.

22 (b) REVIEW.—

23 (1) IN GENERAL.—Not later than February 1
24 of each renewal year, the President shall review all
25 export controls in effect under this title.

1 (2) CONSULTATION.—

2 (A) REQUIREMENT.—Before completing a
3 review under paragraph (1), the President shall
4 consult with the Committee on Banking, Hous-
5 ing, and Urban Affairs of the Senate and the
6 Committee on International Relations of the
7 House of Representative regarding each export
8 control that is being reviewed.

9 (B) CLASSIFIED CONSULTATION.—The
10 consultations may be conducted on a classified
11 basis if the Secretary considers it necessary.

12 (3) PUBLIC COMMENT.—In conducting the re-
13 view of each export control under paragraph (1), the
14 President shall provide a period of not less than 30
15 days for any interested person to submit comments
16 on renewal of the export control. The President shall
17 publish notice of the opportunity for public comment
18 in the Federal Register not less than 45 days before
19 the review is required to be completed.

20 (c) REPORT TO CONGRESS.—

21 (1) REQUIREMENT.—Before renewing an export
22 control imposed under this title, the President shall
23 submit to the committees of Congress referred to in
24 subsection (b)(2)(A) a report on each export control
25 that the President intends to renew.

1 (2) FORM AND CONTENT OF REPORT.—The re-
2 port may be provided on a classified basis if the Sec-
3 retary considers it necessary. Each report shall con-
4 tain the following:

5 (A) A clearly stated explanation of the spe-
6 cific United States foreign policy objective that
7 the existing export control was intended to
8 achieve.

9 (B) An assessment of—

10 (i) the extent to which the existing ex-
11 port control achieved its objectives before
12 renewal based on the objective criteria es-
13 tablished for evaluating the export control;
14 and

15 (ii) the reasons why the existing ex-
16 port control has failed to fully achieve its
17 objectives and, if renewed, how the export
18 control will achieve that objective before
19 the next renewal year.

20 (C) An updated description and assess-
21 ment of—

22 (i) each of the criteria described in
23 section 303, and

1 (ii) each matter required to be re-
2 ported under section 304(b) (1) through
3 (8).

4 (3) RENEWAL OF EXPORT CONTROL.—The
5 President may renew an export control under this
6 title after submission of the report described in
7 paragraph (2) and publication of notice of renewal
8 in the Federal Register.

9 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, the President—

12 (1) shall terminate any export control imposed
13 under this title if the President determines that the
14 control has substantially achieved the objective for
15 which it was imposed; and

16 (2) may terminate at any time any export con-
17 trol imposed under this title that is not required by
18 law.

19 (b) EXCEPTION.—Paragraphs (1) and (2) of sub-
20 section (a) do not apply to any export control imposed pur-
21 suant to section 310.

22 (c) EFFECTIVE DATE OF TERMINATION.—The termi-
23 nation of an export control pursuant to this section shall
24 take effect on the date notice of the termination is pub-
25 lished in the Federal Register.

1 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**
2 **TIONS.**

3 Notwithstanding any other provision of this Act set-
4 ting forth limitations on authority to control exports and
5 except as provided in section 304, the President may im-
6 pose controls on exports to a particular country or
7 countries—

8 (1) of items listed on the control list of a multi-
9 lateral export control regime, as defined in section
10 2(14); or

11 (2) in order to fulfill obligations or commit-
12 ments of the United States under resolutions of the
13 United Nations and under treaties, or other inter-
14 national agreements and arrangements, to which the
15 United States is a party.

16 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**
17 **INTERNATIONAL TERRORISM.**

18 (a) **LICENSE REQUIRED.**—Notwithstanding any
19 other provision of this Act setting forth limitations on the
20 authority to control exports, a license shall be required for
21 the export of any item to a country if the Secretary of
22 State has determined that—

23 (1) the government of such country has repeat-
24 edly provided support for acts of international ter-
25 rorism; and

1 (2) the export of the item could make a signifi-
2 cant contribution to the military potential of such
3 country, including its military logistics capability, or
4 could enhance the ability of such country to support
5 acts of international terrorism.

6 (b) NOTIFICATION.—The Secretary and the Sec-
7 retary of State shall notify the Committee on International
8 Relations of the House of Representatives and the Com-
9 mittee on Banking, Housing, and Urban Affairs and the
10 Committee on Foreign Relations of the Senate at least 30
11 days before issuing any license required by subsection (a).

12 (c) DETERMINATIONS REGARDING REPEATED SUP-
13 PORT.—Each determination of the Secretary of State
14 under subsection (a)(1), including each determination in
15 effect on the date of the enactment of the Antiterrorism
16 and Arms Export Amendments Act of 1989, shall be pub-
17 lished in the Federal Register.

18 (d) LIMITATIONS ON RESCINDING DETERMINA-
19 TION.—A determination made by the Secretary of State
20 under subsection (a)(1) may not be rescinded unless the
21 President submits to the Speaker of the House of Rep-
22 resentatives and the Chairman of the Committee on Bank-
23 ing, Housing, and Urban Affairs and the Chairman of the
24 Committee on Foreign Relations of the Senate—

1 (1) before the proposed rescission would take
2 effect, a report certifying that—

3 (A) there has been a fundamental change
4 in the leadership and policies of the government
5 of the country concerned;

6 (B) that government is not supporting acts
7 of international terrorism; and

8 (C) that government has provided assur-
9 ances that it will not support acts of inter-
10 national terrorism in the future; or

11 (2) at least 45 days before the proposed rescis-
12 sion would take effect, a report justifying the rescis-
13 sion and certifying that—

14 (A) the government concerned has not pro-
15 vided any support for international terrorism
16 during the preceding 6-month period; and

17 (B) the government concerned has pro-
18 vided assurances that it will not support acts of
19 international terrorism in the future.

20 (e) INFORMATION TO BE INCLUDED IN NOTIFICA-
21 TION.—The Secretary and the Secretary of State shall in-
22 clude in the notification required by subsection (b)—

23 (1) a detailed description of the item to be of-
24 fered, including a brief description of the capabilities
25 of any item for which a license to export is sought;

1 (2) the reasons why the foreign country or
2 international organization to which the export or
3 transfer is proposed to be made needs the item
4 which is the subject of such export or transfer and
5 a description of the manner in which such country
6 or organization intends to use the item;

7 (3) the reasons why the proposed export or
8 transfer is in the national interest of the United
9 States;

10 (4) an analysis of the impact of the proposed
11 export or transfer on the military capabilities of the
12 foreign country or international organization to
13 which such export or transfer would be made;

14 (5) an analysis of the manner in which the pro-
15 posed export would affect the relative military
16 strengths of countries in the region to which the
17 item which is the subject of such export would be de-
18 livered and whether other countries in the region
19 have comparable kinds and amounts of the item; and

20 (6) an analysis of the impact of the proposed
21 export or transfer on the United States relations
22 with the countries in the region to which the item
23 which is the subject of such export would be deliv-
24 ered.

1 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

2 (a) IN GENERAL.—Crime control and detection in-
3 struments and equipment shall be approved for export by
4 the Secretary only pursuant to an individual export li-
5 cense. Notwithstanding any other provision of this Act—

6 (1) any determination by the Secretary of what
7 goods or technology shall be included on the list es-
8 tablished pursuant to this subsection as a result of
9 the export restrictions imposed by this section shall
10 be made with the concurrence of the Secretary of
11 State, and

12 (2) any determination by the Secretary to ap-
13 prove or deny an export license application to export
14 crime control or detection instruments or equipment
15 shall be made in concurrence with the recommenda-
16 tions of the Secretary of State submitted to the Sec-
17 retary with respect to the application pursuant to
18 section 401 of this Act,

19 except that, if the Secretary does not agree with the Sec-
20 retary of State with respect to any determination under
21 paragraph (1) or (2), the matter shall be referred to the
22 President for resolution.

23 (b) EXCEPTION.—The provisions of this section shall
24 not apply with respect to exports to countries that are
25 members of the North Atlantic Treaty Organization or to
26 Japan, Australia, or New Zealand, or to such other coun-

1 tries as the President shall designate consistent with the
2 purposes of this section and section 502B of the Foreign
3 Assistance Act of 1961 (22 U.S.C. 2304).

4 **TITLE IV—PROCEDURES FOR EX-**
5 **PORT LICENSES AND INTER-**
6 **AGENCY DISPUTE RESOLU-**
7 **TION**

8 **SEC. 401. EXPORT LICENSE PROCEDURES.**

9 (a) RESPONSIBILITY OF THE SECRETARY.—

10 (1) IN GENERAL.—All applications for a license
11 or other authorization to export a controlled item
12 shall be filed in such manner and include such infor-
13 mation as the Secretary may, by regulation, pre-
14 scribe.

15 (2) PROCEDURES.—In guidance and regulations
16 that implement this section, the Secretary shall de-
17 scribe the procedures required by this section, the
18 responsibilities of the Secretary and of other depart-
19 ments and agencies in reviewing applications, the
20 rights of the applicant, and other relevant matters
21 affecting the review of license applications.

22 (3) CALCULATION OF PROCESSING TIMES.—In
23 calculating the processing times set forth in this
24 title, the Secretary shall use calendar days, except
25 that if the final day for a required action falls on a

1 weekend or holiday, that action shall be taken no
2 later than the following business day.

3 (4) CRITERIA FOR EVALUATING APPLICA-
4 TIONS.—In determining whether to grant an appli-
5 cation to export a controlled item under this Act, the
6 following criteria shall be considered:

7 (A) The characteristics of the controlled
8 item.

9 (B) The threat to—

10 (i) the national security interests of
11 the United States from items controlled
12 under title II of this Act; or

13 (ii) the foreign policy of the United
14 States from items controlled under title III
15 of this Act.

16 (C) The country tier designation of the
17 country to which a controlled item is to be ex-
18 ported pursuant to section 203.

19 (D) The risk of export diversion or misuse
20 by—

21 (i) the exporter;

22 (ii) the method of export;

23 (iii) the end-user;

24 (iv) the country where the end-user is
25 located; and

- 1 (v) the end-use.
- 2 (E) Risk mitigating factors including, but
3 not limited to—
- 4 (i) changing the characteristics of the
5 controlled item;
- 6 (ii) after-market monitoring by the ex-
7 porter; and
- 8 (iii) post-shipment verification.
- 9 (b) INITIAL SCREENING.—
- 10 (1) UPON RECEIPT OF APPLICATION.—Upon re-
11 ceipt of an export license application, the Secretary
12 shall enter and maintain in the records of the De-
13 partment information regarding the receipt and sta-
14 tus of the application.
- 15 (2) INITIAL PROCEDURES.—
- 16 (A) IN GENERAL.—Not later than 9 days
17 after receiving any license application, the Sec-
18 retary shall—
- 19 (i) contact the applicant if the appli-
20 cation is improperly completed or if addi-
21 tional information is required, and hold the
22 application for a reasonable time while the
23 applicant provides the necessary correc-
24 tions or information, and such time shall

1 not be included in calculating the time pe-
2 riods prescribed in this title;

3 (ii) refer the application, through the
4 use of a common data base or other
5 means, and all information submitted by
6 the applicant, and all necessary re-
7 commendations and analyses by the Sec-
8 retary to the Secretary of Defense, the
9 Secretary of State, and the heads of and
10 other departments and agencies the Sec-
11 retary considers appropriate;

12 (iii) ensure that the classification stat-
13 ed on the application for the export items
14 is correct; and

15 (iv) return the application if a license
16 is not required.

17 (B) REFERRAL NOT REQUIRED.—In the
18 event that the head of a department or agency
19 determines that certain types of applications
20 need not be referred to the department or agen-
21 cy, such department or agency head shall notify
22 the Secretary of the specific types of such appli-
23 cations that the department or agency does not
24 wish to review.

1 (3) WITHDRAWAL OF APPLICATION.—An appli-
2 cant may, by written notice to the Secretary, with-
3 draw an application at any time before final action.

4 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
5 CIES.—

6 (1) REFERRAL TO OTHER AGENCIES.—The Sec-
7 retary shall promptly refer a license application to
8 the departments and agencies under subsection (b)
9 to make recommendations and provide information
10 to the Secretary.

11 (2) RESPONSIBILITY OF REFERRAL DEPART-
12 MENTS AND AGENCIES.—The Secretary of Defense,
13 the Secretary of State, and the heads of other re-
14 viewing departments and agencies shall take all nec-
15 essary actions in a prompt and responsible manner
16 on an application. Each department or agency re-
17 viewing an application under this section shall estab-
18 lish and maintain records properly identifying and
19 monitoring the status of the matter referred to the
20 department or agency.

21 (3) ADDITIONAL INFORMATION REQUESTS.—
22 Each department or agency to which a license appli-
23 cation is referred shall specify to the Secretary any
24 information that is not in the application that would
25 be required for the department or agency to make

1 a determination with respect to the application, and
2 the Secretary shall promptly request such informa-
3 tion from the applicant. The time that may elapse
4 between the date the information is requested by
5 that department or agency and the date the infor-
6 mation is received by that department or agency
7 shall not be included in calculating the time periods
8 prescribed in this title.

9 (4) TIME PERIOD FOR ACTION BY REFERRAL
10 DEPARTMENTS AND AGENCIES.—Within 30 days
11 after the Secretary refers an application under this
12 section, each department or agency to which an ap-
13 plication has been referred shall provide the Sec-
14 retary with a recommendation either to approve the
15 license or to deny the license. A recommendation
16 that the Secretary deny a license shall include a
17 statement of reasons for the recommendation that
18 are consistent with the provisions of this title, and
19 shall cite both the specific statutory and regulatory
20 basis for the recommendation. A department or
21 agency that fails to provide a recommendation in ac-
22 cordance with this paragraph within that 30-day pe-
23 riod shall be deemed to have no objection to the de-
24 cision of the Secretary on the application.

1 (d) ACTION BY THE SECRETARY.—Not later than 30
2 days after the date the application is referred, the Sec-
3 retary shall—

4 (1) if there is agreement among the referral de-
5 partments and agencies to issue or deny the
6 license—

7 (A) issue the license and ensure all appro-
8 priate personnel in the Department (including
9 the Office of Export Enforcement) are notified
10 of all approved license applications; or

11 (B) notify the applicant of the intention to
12 deny the license; or

13 (2) if there is no agreement among the referral
14 departments and agencies, notify the applicant that
15 the application is subject to the interagency dispute
16 resolution process provided for in section 402.

17 (e) CONSEQUENCES OF APPLICATION DENIAL.—

18 (1) IN GENERAL.—If a determination is made
19 to deny a license, the applicant shall be informed in
20 writing, consistent with the protection of intelligence
21 information sources and methods, by the Secretary
22 of—

23 (A) the determination;

24 (B) the specific statutory and regulatory
25 bases for the proposed denial;

1 (C) what, if any, modifications to, or re-
2 strictions on, the items for which the license
3 was sought would allow such export to be com-
4 patible with export controls imposed under this
5 Act, and which officer or employee of the De-
6 partment would be in a position to discuss
7 modifications or restrictions with the applicant
8 and the specific statutory and regulatory bases
9 for imposing such modifications or restrictions;

10 (D) to the extent consistent with the na-
11 tional security and foreign policy interests of
12 the United States, the specific considerations
13 that led to the determination to deny the appli-
14 cation; and

15 (E) the availability of appeal procedures.

16 (2) PERIOD FOR APPLICANT TO RESPOND.—
17 The applicant shall have 20 days from the date of
18 the notice of intent to deny the application to re-
19 spond in a manner that addresses and corrects the
20 reasons for the denial. If the applicant does not ade-
21 quately address or correct the reasons for denial or
22 does not respond, the license shall be denied. If the
23 applicant does address or correct the reasons for de-
24 nial, the application shall be considered in a timely
25 manner.

1 (f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

2 (1) IN GENERAL.—The Secretary shall establish
3 appropriate procedures for an applicant to appeal to
4 the Secretary the denial of an application or other
5 administrative action under this Act. In any case in
6 which the Secretary proposes to reverse the decision
7 with respect to the application, the appeal under this
8 subsection shall be handled in accordance with the
9 interagency dispute resolution process provided for
10 in section 402(b)(3).

11 (2) ENFORCEMENT OF TIME LIMITS.—

12 (A) IN GENERAL.—In any case in which
13 an action prescribed in this section is not taken
14 on an application within the time period estab-
15 lished by this section (except in the case of a
16 time period extended under subsection (g) of
17 which the applicant is notified), the applicant
18 may file a petition with the Secretary request-
19 ing compliance with the requirements of this
20 section. When such petition is filed, the Sec-
21 retary shall take immediate steps to correct the
22 situation giving rise to the petition and shall
23 immediately notify the applicant of such steps.

24 (B) BRINGING COURT ACTION.—If, within
25 20 days after a petition is filed under subpara-

1 graph (A), the processing of the application has
2 not been brought into conformity with the re-
3 quirements of this section, or the processing of
4 the application has been brought into con-
5 formity with such requirements but the Sec-
6 retary has not so notified the applicant, the ap-
7 plicant may bring an action in an appropriate
8 United States district court for an order requir-
9 ing compliance with the time periods required
10 by this section.

11 (g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—
12 The following actions related to processing an application
13 shall not be included in calculating the time periods pre-
14 scribed in this section:

15 (1) AGREEMENT OF THE APPLICANT.—Delays
16 upon which the Secretary and the applicant mutu-
17 ally agree.

18 (2) PRELICENSE CHECKS.—A prelicense check
19 (for a period not to exceed 60 days) that may be re-
20 quired to establish the identity and reliability of the
21 recipient of items controlled under this Act, if—

22 (A) the need for the prelicense check is de-
23 termined by the Secretary or by another depart-
24 ment or agency in any case in which the re-

1 quest for the precense check is made by such
2 department or agency;

3 (B) the request for the precense check is
4 initiated by the Secretary within 5 days after
5 the determination that the precense check is
6 required; and

7 (C) the analysis of the result of the
8 precense check is completed by the Secretary
9 within 5 days.

10 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
11 MENT ASSURANCES.—Any request by the Secretary
12 or another department or agency for government-to-
13 government assurances of suitable end-uses of items
14 approved for export, when failure to obtain such as-
15 surances would result in rejection of the application,
16 if—

17 (A) the request for such assurances is sent
18 to the Secretary of State within 5 days after
19 the determination that the assurances are re-
20 quired;

21 (B) the Secretary of State initiates the re-
22 quest of the relevant government within 10
23 days thereafter; and

1 (C) the license is issued within 5 days
2 after the Secretary receives the requested assur-
3 ances.

4 (4) EXCEPTION.—Whenever a prelicense check
5 described in paragraph (2) or assurances described
6 in paragraph (3) are not requested within the time
7 periods set forth therein, then the time expended for
8 such prelicense check or assurances shall be included
9 in calculating the time periods established by this
10 section.

11 (5) MULTILATERAL REVIEW.—Multilateral re-
12 view of a license application to the extent that such
13 multilateral review is required by a relevant multilat-
14 eral regime.

15 (6) CONGRESSIONAL NOTIFICATION.—Such
16 time as is required for mandatory congressional noti-
17 fications under this Act.

18 (7) CONSULTATIONS.—Consultation with for-
19 eign governments, if such consultation is provided
20 for by a relevant multilateral regime as a pre-
21 condition for approving a license.

22 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
23 IES.—

24 (1) CLASSIFICATION REQUESTS.—In any case
25 in which the Secretary receives a written request

1 asking for the proper classification of an item on the
2 Control List or the applicability of licensing require-
3 ments under this title, the Secretary shall promptly
4 notify the Secretary of Defense and the head of any
5 department or agency the Secretary considers appro-
6 priate. The Secretary shall, within 14 days after re-
7 ceiving the request, inform the person making the
8 request of the proper classification.

9 (2) OTHER INQUIRIES.—In any case in which
10 the Secretary receives a written request for informa-
11 tion under this Act, the Secretary shall, within 30
12 days after receiving the request, reply with that in-
13 formation to the person making the request.

14 **SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

15 (a) IN GENERAL.—All license applications on which
16 agreement cannot be reached shall be referred to the inter-
17 agency dispute resolution process for decision.

18 (b) INTERAGENCY DISPUTE RESOLUTION PROC-
19 ESS.—

20 (1) INITIAL RESOLUTION.—The Secretary shall
21 establish, select the chairperson of, and determine
22 procedures for an interagency committee to review
23 initially all license applications described in sub-
24 section (a) with respect to which the Secretary and
25 any of the referral departments and agencies are not

1 in agreement. The chairperson shall consider the po-
2 sitions of all the referral departments and agencies
3 (which shall be included in the minutes described in
4 subsection (c)(2)) and make a decision on the license
5 application, including appropriate revisions or condi-
6 tions thereto.

7 (2) INTELLIGENCE COMMUNITY.—The analytic
8 product of the intelligence community should be fully
9 considered with respect to any proposed license
10 under this title.

11 (3) FURTHER RESOLUTION.—The President
12 shall establish additional levels for review or appeal
13 of any matter that cannot be resolved pursuant to
14 the process described in paragraph (1). Each such
15 review shall—

16 (A) provide for decision-making based on
17 the majority vote of the participating depart-
18 ments and agencies;

19 (B) provide that a department or agency
20 that fails to take a timely position, citing the
21 specific statutory and regulatory bases for a po-
22 sition, shall be deemed to have no objection to
23 the pending decision;

24 (C) provide that any decision of an inter-
25 agency committee established under paragraph

1 (1) or interagency dispute resolution process es-
2 tablished under this paragraph may be esca-
3 lated to the next higher level of review at the
4 request of an official appointed by the Presi-
5 dent, by and with the advice of the Senate, or
6 an officer properly acting in such capacity, of a
7 department or agency that participated in the
8 interagency committee or dispute resolution
9 process that made the decision; and

10 (D) ensure that matters are resolved or re-
11 ferred to the President not later than 90 days
12 after the date the completed license application
13 is referred by the Secretary.

14 (c) FINAL ACTION.—

15 (1) IN GENERAL.—Once a final decision is
16 made under subsection (b), the Secretary shall
17 promptly—

18 (A) issue the license and ensure that all
19 appropriate personnel in the Department (in-
20 cluding the Office of Export Enforcement) are
21 notified of all approved license applications; or

22 (B) notify the applicant of the intention to
23 deny the application.

24 (2) MINUTES.—The interagency committee and
25 each level of the interagency dispute resolution proc-

1 ess shall keep reasonably detailed minutes of all
2 meetings. On each matter before the interagency
3 committee or before any other level of the inter-
4 agency dispute resolution process in which members
5 disagree, each member shall clearly state the reasons
6 for the member's position and the reasons shall be
7 entered in the minutes.

8 **TITLE V—INTERNATIONAL AR-**
9 **RANGEMENTS; FOREIGN BOY-**
10 **COTTS; SANCTIONS; AND EN-**
11 **FORCEMENT**

12 **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

13 (a) MULTILATERAL EXPORT CONTROL REGIMES.—

14 (1) POLICY.—It is the policy of the United
15 States to seek multilateral arrangements that sup-
16 port the national security objectives of the United
17 States (as described in title II) and that establish
18 fairer and more predictable competitive opportunities
19 for United States exporters.

20 (2) PARTICIPATION IN EXISTING REGIMES.—

21 Congress encourages the United States to continue
22 its active participation in and to strengthen existing
23 multilateral export control regimes.

24 (3) PARTICIPATION IN NEW REGIMES.—It is the

25 policy of the United States to participate in addi-

1 tional multilateral export control regimes if such
2 participation would serve the national security inter-
3 ests of the United States.

4 (b) ANNUAL REPORT ON MULTILATERAL EXPORT
5 CONTROL REGIMES.—Not later than February 1 of each
6 year, the President shall submit to the Committee on
7 Banking, Housing, and Urban Affairs of the Senate and
8 the Committee on International Relations of the House
9 of Representatives a report evaluating the effectiveness of
10 each multilateral export control regime, including an as-
11 sessment of the steps undertaken pursuant to subsections
12 (e) and (d). The report, or any part of this report, may
13 be submitted in classified form to the extent the President
14 considers necessary.

15 (c) STANDARDS FOR MULTILATERAL EXPORT CON-
16 TROL REGIMES.—The President shall take steps to estab-
17 lish the following features in any multilateral export con-
18 trol regime in which the United States is participating or
19 may participate:

20 (1) FULL MEMBERSHIP.—All supplier countries
21 are members of the regime, and the policies and ac-
22 tivities of the members are consistent with the objec-
23 tives and membership criteria of the multilateral ex-
24 port control regime.

1 (2) EFFECTIVE ENFORCEMENT AND COMPLI-
2 ANCE.—The regime promotes enforcement and com-
3 pliance with the regime’s rules and guidelines.

4 (3) PUBLIC UNDERSTANDING.—The regime
5 makes an effort to enhance public understanding of
6 the purpose and procedures of the multilateral ex-
7 port control regime.

8 (4) EFFECTIVE IMPLEMENTATION PROCE-
9 DURES.—The multilateral export control regime has
10 procedures for the uniform and consistent interpre-
11 tation and implementation of its rules and guide-
12 lines.

13 (5) ENHANCED COOPERATION WITH REGIME
14 NONMEMBERS.—There is agreement among the
15 members of the multilateral export control regime
16 to—

17 (A) cooperate with governments outside
18 the regime to restrict the export of items con-
19 trolled by such regime; and

20 (B) establish an ongoing mechanism in the
21 regime to coordinate planning and implementa-
22 tion of export control measures related to such
23 cooperation.

24 (6) PERIODIC HIGH-LEVEL MEETINGS.—There
25 are regular periodic meetings of high-level represent-

1 atives of the governments of members of the multi-
2 lateral export control regime for the purpose of co-
3 ordinating export control policies and issuing policy
4 guidance to members of the regime.

5 (7) COMMON LIST OF CONTROLLED ITEMS.—
6 There is agreement on a common list of items con-
7 trolled by the multilateral export control regime.

8 (8) REGULAR UPDATES OF COMMON LIST.—
9 There is a procedure for removing items from the
10 list of controlled items when the control of such
11 items no longer serves the objectives of the members
12 of the multilateral export control regime.

13 (9) TREATMENT OF CERTAIN COUNTRIES.—
14 There is agreement to prevent the export or diver-
15 sion of the most sensitive items to countries whose
16 activities are threatening to the national security of
17 the United States or its allies.

18 (10) HARMONIZATION OF LICENSE APPROVAL
19 PROCEDURES.—There is harmonization among the
20 members of the regime of their national export li-
21 cense approval procedures, practices, and standards.

22 (11) UNDERCUTTING.—There is a limit with re-
23 spect to when members of a multilateral export con-
24 trol regime—

1 (A) grant export licenses for any item that
2 is substantially identical to or directly competi-
3 tive with an item controlled pursuant to the re-
4 gime, where the United States has denied an
5 export license for such item, or

6 (B) approve exports to a particular end
7 user to which the United States has denied ex-
8 port license for a similar item.

9 (d) STANDARDS FOR NATIONAL EXPORT CONTROL
10 SYSTEMS.—The President shall take steps to attain the
11 cooperation of members of each regime in implementing
12 effective national export control systems containing the
13 following features:

14 (1) EXPORT CONTROL LAW.—Enforcement au-
15 thority, civil and criminal penalties, and statutes of
16 limitations are sufficient to deter potential violations
17 and punish violators under the member’s export con-
18 trol law.

19 (2) LICENSE APPROVAL PROCESS.—The system
20 for evaluating export license applications includes
21 sufficient technical expertise to assess the licensing
22 status of exports and ensure the reliability of end
23 users.

1 (3) ENFORCEMENT.—The enforcement mecha-
2 nism provides authority for trained enforcement offi-
3 cers to investigate and prevent illegal exports.

4 (4) DOCUMENTATION.—There is a system of
5 export control documentation and verification with
6 respect to controlled items.

7 (5) INFORMATION.—There are procedures for
8 the coordination and exchange of information con-
9 cerning licensing, end users, and enforcement with
10 other members of the multilateral export control re-
11 gime.

12 (6) RESOURCES.—The member has devoted
13 adequate resources to administer effectively the au-
14 thorities, systems, mechanisms, and procedures de-
15 scribed in paragraphs (1) through (5).

16 (e) OBJECTIVES REGARDING MULTILATERAL EX-
17 PORT CONTROL REGIMES.—The President shall seek to
18 achieve the following objectives with regard to multilateral
19 export control regimes:

20 (1) STRENGTHEN EXISTING REGIMES.—
21 Strengthen existing multilateral export control
22 regimes—

23 (A) by creating a requirement to share in-
24 formation about export license applications

1 among members before a member approves an
2 export license; and

3 (B) harmonizing national export license
4 approval procedures and practices, including
5 the elimination of undercutting.

6 (2) REVIEW AND UPDATE.—Review and update
7 multilateral regime export control lists with other
8 members, taking into account—

9 (A) national security concerns;

10 (B) the controllability of items; and

11 (C) the costs and benefits of controls.

12 (3) ENCOURAGE COMPLIANCE BY NONMEM-
13 BERS.—Encourage nonmembers of the multilateral
14 export control regime—

15 (A) to strengthen their national export
16 control regimes and improve enforcement;

17 (B) to adhere to the appropriate multilat-
18 eral export control regime; and

19 (C) not to undermine an existing multilat-
20 eral export control regime by exporting con-
21 trolled items in a manner inconsistent with the
22 guidelines of the regime.

23 (f) TRANSPARENCY OF MULTILATERAL EXPORT
24 CONTROL REGIMES.—

1 (1) PUBLICATION OF INFORMATION ON EACH
2 EXISTING REGIME.—Not later than 120 days after
3 the date of enactment of this Act, the Secretary
4 shall, for each multilateral export control regime, to
5 the extent that it is not inconsistent with the ar-
6 rangements of that regime (in the judgment of the
7 Secretary of State) or with the national interest,
8 publish in the Federal Register and post on the De-
9 partment of Commerce website the following infor-
10 mation with respect to the regime:

11 (A) The purposes of the regime.

12 (B) The members of the regime.

13 (C) The export licensing policy of the re-
14 gime.

15 (D) The items that are subject to export
16 controls under the regime, together with all
17 public notes, understandings, and other aspects
18 of the agreement of the regime, and all changes
19 thereto.

20 (E) Any countries, end uses, or end users
21 that are subject to the export controls of the re-
22 gime.

23 (F) Rules of interpretation.

24 (G) Major policy actions.

1 (H) The rules and procedures of the re-
2 gime for establishing and modifying any matter
3 described in subparagraphs (A) through (G)
4 and for reviewing export license applications.

5 (2) NEW REGIMES.—Not later than 60 days
6 after the United States joins or organizes a new
7 multilateral export control regime, the Secretary
8 shall, to the extent that it is not inconsistent with
9 arrangements under the regime (in the judgment of
10 the Secretary of State) or with the national interest,
11 publish in the Federal Register and post on the De-
12 partment of Commerce website the information de-
13 scribed in subparagraphs (A) through (H) of para-
14 graph (1) with respect to the regime.

15 (3) PUBLICATION OF CHANGES.—Not later
16 than 60 days after a multilateral export control re-
17 gime adopts any change in the information published
18 under this subsection, the Secretary shall, to the ex-
19 tent not inconsistent with the arrangements under
20 the regime or the national interest, publish such
21 changes in the Federal Register and post such
22 changes on the Department of Commerce website.

23 (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
24 TROL SYSTEMS.—The Secretary is encouraged to continue
25 to—

1 (1) participate in training of, and provide train-
2 ing to, officials of other countries on the principles
3 and procedures for implementing effective export
4 controls; and

5 (2) participate in any such training provided by
6 other departments and agencies of the United
7 States.

8 **SEC. 502. FOREIGN BOYCOTTS.**

9 (a) PURPOSES.—The purposes of this section are as
10 follows:

11 (1) To counteract restrictive trade practices or
12 boycotts fostered or imposed by foreign countries
13 against other countries friendly to the United States
14 or against any United States person.

15 (2) To encourage and, in specified cases, re-
16 quire United States persons engaged in the export of
17 items to refuse to take actions, including furnishing
18 information or entering into or implementing agree-
19 ments, which have the effect of furthering or sup-
20 porting the restrictive trade practices or boycotts
21 fostered or imposed by any foreign country against
22 a country friendly to the United States or against
23 any United States person.

24 (b) PROHIBITIONS AND EXCEPTIONS.—

1 (1) PROHIBITIONS.—In order to carry out the
2 purposes set forth in subsection (a), the President
3 shall issue regulations prohibiting any United States
4 person, with respect to that person’s activities in the
5 interstate or foreign commerce of the United States,
6 from taking or knowingly agreeing to take any of
7 the following actions with intent to comply with, fur-
8 ther, or support any boycott fostered or imposed by
9 a foreign country against a country that is friendly
10 to the United States and is not itself the object of
11 any form of boycott pursuant to United States law
12 or regulation:

13 (A) Refusing, or requiring any other person
14 to refuse, to do business with or in the boy-
15 cotted country, with any business concern orga-
16 nized under the laws of the boycotted country,
17 with any national or resident of the boycotted
18 country, or with any other person, pursuant to
19 an agreement with, or requirement of, or a re-
20 quest from or on behalf of the boycotting coun-
21 try (subject to the condition that the intent re-
22 quired to be associated with such an act in
23 order to constitute a violation of the prohibition
24 is not indicated solely by the mere absence of
25 a business relationship with or in the boycotted

1 country, with any business concern organized
2 under the laws of the boycotted country, with
3 any national or resident of the boycotted coun-
4 try, or with any other person).

5 (B) Refusing, or requiring any other per-
6 son to refuse, to employ or otherwise discrimi-
7 nate against any United States person on the
8 basis of the race, religion, sex, or national ori-
9 gin of that person or of any owner, officer, di-
10 rector, or employee of such person.

11 (C) Furnishing information with respect to
12 the race, religion, sex, or national origin of any
13 United States person or of any owner, officer,
14 director, or employee of such person.

15 (D) Furnishing information (other than
16 furnishing normal business information in a
17 commercial context, as defined by the Sec-
18 retary) about whether any person has, has had,
19 or proposes to have any business relationship
20 (including a relationship by way of sale, pur-
21 chase, legal or commercial representation, ship-
22 ping or other transport, insurance, investment,
23 or supply) with or in the boycotted country,
24 with any business concern organized under the
25 laws of the boycotted country, with any national

1 or resident of the boycotted country, or with
2 any other person that is known or believed to
3 be restricted from having any business relation-
4 ship with or in the boycotting country.

5 (E) Furnishing information about whether
6 any person is a member of, has made a con-
7 tribution to, or is otherwise associated with or
8 involved in the activities of any charitable or
9 fraternal organization which supports the boy-
10 cotted country.

11 (F) Paying, honoring, confirming, or other-
12 wise implementing a letter of credit which con-
13 tains any condition or requirement the compli-
14 ance with which is prohibited by regulations
15 issued pursuant to this paragraph, and no
16 United States person shall, as a result of the
17 application of this paragraph, be obligated to
18 pay or otherwise honor or implement such letter
19 of credit.

20 (2) EXCEPTIONS.—Regulations issued pursuant
21 to paragraph (1) shall provide exceptions for—

22 (A) compliance, or agreement to comply,
23 with requirements—

24 (i) prohibiting the import of items
25 from the boycotted country or items pro-

1 duced or provided, by any business concern
2 organized under the laws of the boycotted
3 country or by nationals or residents of the
4 boycotted country; or

5 (ii) prohibiting the shipment of items
6 to the boycotting country on a carrier of
7 the boycotted country or by a route other
8 than that prescribed by the boycotting
9 country or the recipient of the shipment;

10 (B) compliance, or agreement to comply,
11 with import and shipping document require-
12 ments with respect to the country of origin, the
13 name of the carrier and route of shipment, the
14 name of the supplier of the shipment, or the
15 name of the provider of other services, except
16 that, for purposes of applying any exception
17 under this subparagraph, no information know-
18 ingly furnished or conveyed in response to such
19 requirements may be stated in negative, black-
20 listing, or similar exclusionary terms, other
21 than with respect to carriers or route of ship-
22 ment as may be permitted by such regulations
23 in order to comply with precautionary require-
24 ments protecting against war risks and confis-
25 cation;

1 (C) compliance, or agreement to comply, in
2 the normal course of business with the unilat-
3 eral and specific selection by a boycotting coun-
4 try, or a national or resident thereof, or car-
5 riers, insurers, suppliers of services to be per-
6 formed within the boycotting country, or spe-
7 cific items which, in the normal course of busi-
8 ness, are identifiable by source when imported
9 into the boycotting country;

10 (D) compliance, or agreement to comply,
11 with export requirements of the boycotting
12 country relating to shipment or transshipment
13 of exports to the boycotted country, to any busi-
14 ness concern of or organized under the laws of
15 the boycotted country, or to any national or
16 resident of the boycotted country;

17 (E) compliance by an individual, or agree-
18 ment by an individual to comply, with the immi-
19 gration or passport requirements of any country
20 with respect to such individual or any member
21 of such individual's family or with requests for
22 information regarding requirements of employ-
23 ment of such individual within the boycotting
24 country; and

1 (F) compliance by a United States person
2 resident in a foreign country, or agreement by
3 such a person to comply, with the laws of the
4 country with respect to the person's activities
5 exclusively therein, and such regulations may
6 contain exceptions for such resident complying
7 with the laws or regulations of the foreign coun-
8 try governing imports into such country of
9 trademarked, trade-named, or similarly specifi-
10 cally identifiable products, or components of
11 products for such person's own use, including
12 the performance of contractual services within
13 that country.

14 (3) LIMITATION ON EXCEPTIONS.—Regulations
15 issued pursuant to paragraphs (2)(C) and (2)(F)
16 shall not provide exceptions from paragraphs (1)(B)
17 and (1)(C).

18 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
19 AFFECTED.—Nothing in this subsection may be con-
20 strued to supersede or limit the operation of the
21 antitrust or civil rights laws of the United States.

22 (5) EVASION.—This section applies to any
23 transaction or activity undertaken by or through a
24 United States person or any other person with in-
25 tent to evade the provisions of this section or the

1 regulations issued pursuant to this subsection. The
2 regulations issued pursuant to this section shall ex-
3 pressly provide that the exceptions set forth in para-
4 graph (2) do not permit activities or agreements (ex-
5 pressed or implied by a course of conduct, including
6 a pattern of responses) that are otherwise prohib-
7 ited, pursuant to the intent of such exceptions.

8 (c) ADDITIONAL REGULATIONS AND REPORTS.—

9 (1) REGULATIONS.—In addition to the regula-
10 tions issued pursuant to subsection (b), regulations
11 issued pursuant to title III shall implement the pur-
12 poses set forth in subsection (a).

13 (2) REPORTS BY UNITED STATES PERSONS.—
14 The regulations shall require that any United States
15 person receiving a request to furnish information,
16 enter into or implement an agreement, or take any
17 other action referred to in subsection (a) shall report
18 that request to the Secretary, together with any
19 other information concerning the request that the
20 Secretary determines appropriate. The person shall
21 also submit to the Secretary a statement regarding
22 whether the person intends to comply, and whether
23 the person has complied, with the request. Any re-
24 port filed pursuant to this paragraph shall be made
25 available promptly for public inspection and copying,

1 except that information regarding the quantity, de-
2 scription, and value of any item to which such report
3 relates may be treated as confidential if the Sec-
4 retary determines that disclosure of that information
5 would place the United States person involved at a
6 competitive disadvantage. The Secretary shall peri-
7 odically transmit summaries of the information con-
8 tained in the reports to the Secretary of State for
9 such action as the Secretary of State, in consultation
10 with the Secretary, considers appropriate to carry
11 out the purposes set forth in subsection (a).

12 (d) PREEMPTION.—The provisions of this section and
13 the regulations issued under this section shall preempt any
14 law, rule, or regulation that—

15 (1) is a law, rule, or regulation of any of the
16 several States or the District of Columbia, or any of
17 the territories or possessions of the United States,
18 or of any governmental subdivision thereof; and

19 (2) pertains to participation in, compliance
20 with, implementation of, or the furnishing of infor-
21 mation regarding restrictive trade practices or boy-
22 cotts fostered or imposed by foreign countries
23 against other countries.

24 **SEC. 503. PENALTIES.**

25 (a) CRIMINAL PENALTIES.—

1 (1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-
2 vidual who willfully violates, conspires to violate, or
3 attempts to violate any provision of this Act or any
4 regulation, license, or order issued under this Act
5 shall be fined up to 10 times the value of the exports
6 involved or \$1,000,000, whichever is greater, impris-
7 oned for not more than 10 years, or both, for each
8 violation.

9 (2) VIOLATIONS BY A PERSON OTHER THAN AN
10 INDIVIDUAL.—Any person other than an individual
11 who willfully violates, conspires to violate, or at-
12 tempts to violate any provision of this Act or any
13 regulation, license, or order issued under this Act
14 shall be fined up to 10 times the value of the exports
15 involved or \$5,000,000, whichever is greater, for
16 each violation.

17 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
18 CEEDS.—

19 (1) FORFEITURE.—Any person who is convicted
20 under paragraph (1) or (2) of subsection (a) shall,
21 in addition to any other penalty, forfeit to the
22 United States—

23 (A) any of that person’s security or other
24 interest in, claim against, or property or con-

1 tractual rights of any kind in the tangible items
2 that were the subject of the violation;

3 (B) any of that person's security or other
4 interest in, claim against, or property or con-
5 tractual rights of any kind in the tangible prop-
6 erty that was used in the export or attempt to
7 export that was the subject of the violation; and

8 (C) any of that person's property consti-
9 tuting, or derived from, any proceeds obtained
10 directly or indirectly as a result of the violation.

11 (2) PROCEDURES.—The procedures in any for-
12 feiture under this subsection, and the duties and au-
13 thority of the courts of the United States and the
14 Attorney General with respect to any forfeiture ac-
15 tion under this subsection, or with respect to any
16 property that may be subject to forfeiture under this
17 subsection, shall be governed by the provisions of
18 chapter 46 of title 18, United States Code (relating
19 to criminal forfeiture), to the same extent as prop-
20 erty subject to forfeiture under that chapter.

21 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
22 TIONS.—

23 (1) CIVIL PENALTIES.—The Secretary may im-
24 pose a civil penalty of up to \$500,000 for each viola-
25 tion of a provision of this Act or any regulation, li-

1 cense, or order issued under this Act. A civil penalty
2 under this paragraph may be in addition to, or in
3 lieu of, any other liability or penalty which may be
4 imposed for such a violation.

5 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
6 retary may deny the export privileges of any person,
7 including the suspension or revocation of the author-
8 ity of such person to export or receive United
9 States-origin items subject to this Act, for a viola-
10 tion of a provision of this Act or any regulation, li-
11 cense, or order issued under this Act.

12 (3) EXCLUSION FROM PRACTICE.—The Sec-
13 retary may exclude any person acting as an attor-
14 ney, accountant, consultant, freight forwarder, or in
15 any other representative capacity from participating
16 before the Department with respect to a license ap-
17 plication or any other matter under this Act.

18 (d) PAYMENT OF CIVIL PENALTIES.—

19 (1) PAYMENT AS CONDITION OF FURTHER EX-
20 PORT PRIVILEGES.—The payment of a civil penalty
21 imposed under subsection (c) may be made a condi-
22 tion for the granting, restoration, or continuing va-
23 lidity of any export license, permission, or privilege
24 granted or to be granted to the person upon whom
25 such penalty is imposed. The period for which the

1 payment of a penalty may be made such a condition
2 may not exceed 1 year after the date on which the
3 payment is due.

4 (2) DEFERRAL OR SUSPENSION.—

5 (A) IN GENERAL.—The payment of a civil
6 penalty imposed under subsection (c) may be
7 deferred or suspended in whole or in part for a
8 period no longer than any probation period
9 (which may exceed 1 year) that may be imposed
10 upon the person on whom the penalty is im-
11 posed.

12 (B) NO BAR TO COLLECTION OF PEN-
13 ALTY.—A deferral or suspension under sub-
14 paragraph (A) shall not operate as a bar to the
15 collection of the penalty concerned in the event
16 that the conditions of the suspension, deferral,
17 or probation are not fulfilled.

18 (3) TREATMENT OF PAYMENTS.—Any amount
19 paid in satisfaction of a civil penalty imposed under
20 subsection (c) shall be covered into the Treasury as
21 miscellaneous receipts.

22 (e) REFUNDS.—

23 (1) AUTHORITY.—

24 (A) IN GENERAL.—The Secretary may, in
25 the Secretary's discretion, refund any civil pen-

1 alty imposed under subsection (c) on the
2 ground of a material error of fact or law in im-
3 position of the penalty.

4 (B) LIMITATION.—A civil penalty may not
5 be refunded under subparagraph (A) later than
6 2 years after payment of the penalty.

7 (2) PROHIBITION ON ACTIONS FOR REFUND.—
8 Notwithstanding section 1346(a) of title 28, United
9 States Code, no action for the refund of any civil
10 penalty referred to in paragraph (1) may be main-
11 tained in any court.

12 (f) EFFECT OF OTHER CONVICTIONS.—

13 (1) DENIAL OF EXPORT PRIVILEGES.—Any per-
14 son convicted of a violation of—

15 (A) a provision of this Act or the Export
16 Administration Act of 1979,

17 (B) a provision of the International Emer-
18 gency Economic Powers Act (50 U.S.C. 1701 et
19 seq.),

20 (C) section 793, 794, or 798 of title 18,
21 United States Code,

22 (D) section 4(b) of the Internal Security
23 Act of 1950 (50 U.S.C. 783(b)),

24 (E) section 38 of the Arms Export Control
25 Act (22 U.S.C. 2778),

1 (F) section 16 of the Trading with the
2 Enemy Act (50 U.S.C. App. 16),

3 (G) any regulation, license, or order issued
4 under any provision of law listed in subpara-
5 graph (A), (B), (C), (D), (E), or (F),

6 (H) section 371 or 1001 of title 18, United
7 States Code, if in connection with the export of
8 controlled items under this Act or any regula-
9 tion, license, or order issued under the Inter-
10 national Emergency Economic Powers Act, or
11 the export of items controlled under the Arms
12 Export Control Act,

13 (I) section 175 of title 18, United States
14 Code,

15 (J) a provision of the Atomic Energy Act
16 (42 U.S.C. 201 et seq.),

17 (K) section 831 of title 18, United States
18 Code, or

19 (L) section 2332a of title 18, United
20 States Code,

21 may, at the discretion of the Secretary, be denied ex-
22 port privileges under this Act for a period not to ex-
23 ceed 10 years from the date of the conviction. The
24 Secretary may also revoke any export license under

1 this Act in which such person had an interest at the
2 time of the conviction.

3 (2) RELATED PERSONS.—The Secretary may
4 exercise the authority under paragraph (1) with re-
5 spect to any person related through affiliation, own-
6 ership, control, or position of responsibility to a per-
7 son convicted of any violation of a law set forth in
8 paragraph (1) upon a showing of such relationship
9 with the convicted person. The Secretary shall make
10 such showing only after providing notice and oppor-
11 tunity for a hearing.

12 (g) STATUTE OF LIMITATIONS.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), a proceeding in which a civil penalty or
15 other administrative sanction (other than a tem-
16 porary denial order) is sought under subsection (c)
17 may not be instituted more than 5 years after the
18 later of the date of the alleged violation or the date
19 of discovery of the alleged violation.

20 (2) EXCEPTION.—

21 (A) TOLLING.—In any case in which a
22 criminal indictment alleging a violation under
23 subsection (a) is returned within the time limits
24 prescribed by law for the institution of such ac-
25 tion, the limitation under paragraph (1) for

1 bringing a proceeding to impose a civil penalty
2 or other administrative sanction under this sec-
3 tion shall, upon the return of the criminal in-
4 dictment, be tolled against all persons named as
5 a defendant.

6 (B) DURATION.—The tolling of the limita-
7 tion with respect to a defendant under subpara-
8 graph (A) as a result of a criminal indictment
9 shall continue for a period of 6 months from
10 the date on which the conviction of the defend-
11 ant becomes final, the indictment against the
12 defendant is dismissed, or the criminal action
13 has concluded.

14 (h) VIOLATIONS DEFINED BY REGULATION.—Noth-
15 ing in this section shall limit the authority of the Secretary
16 to define by regulation violations under this Act.

17 (i) CONSTRUCTION.—Nothing in subsection (c), (d),
18 (e), (f), or (g) limits—

19 (1) the availability of other administrative or
20 judicial remedies with respect to a violation of a pro-
21 vision of this Act, or any regulation, order, or license
22 issued under this Act;

23 (2) the authority to compromise and settle ad-
24 ministrative proceedings brought with respect to any
25 such violation; or

1 (3) the authority to compromise, remit, or miti-
2 gate seizures and forfeitures pursuant to section
3 1(b) of title VI of the Act of June 15, 1917 (22
4 U.S.C. 401(b)).

5 **SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

6 (a) VIOLATIONS BY UNITED STATES PERSONS.—

7 (1) SANCTIONS.—

8 (A) IN GENERAL.—If the President deter-
9 mines that a United States person knowingly—

10 (i) exports, transfers, or otherwise en-
11 engages in the trade of any item on the
12 MTCR Annex, in violation of the provi-
13 sions of section 38 (22 U.S.C. 2778) or
14 chapter 7 of the Arms Export Control Act,
15 title II or III of this Act, or any regula-
16 tions or orders issued under any such pro-
17 visions,

18 (ii) conspires to or attempts to engage
19 in such export, transfer, or trade, or

20 (iii) facilitates such export, transfer,
21 or trade by any other person,

22 then the President shall impose the applicable
23 sanctions described in subparagraph (B).

1 (B) SANCTIONS DESCRIBED.—The sanc-
2 tions which apply to a United States person
3 under subparagraph (A) are the following:

4 (i) If the item on the MTCR Annex
5 involved in the export, transfer, or trade is
6 missile equipment or technology within cat-
7 egory II of the MTCR Annex, then the
8 President shall deny to such United States
9 person, for a period of 2 years, licenses for
10 the transfer of missile equipment or tech-
11 nology controlled under this Act.

12 (ii) If the item on the MTCR Annex
13 involved in the export, transfer, or trade is
14 missile equipment or technology within cat-
15 egory I of the MTCR Annex, then the
16 President shall deny to such United States
17 person, for a period of not less than 2
18 years, all licenses for items the export of
19 which is controlled under this Act.

20 (2) DISCRETIONARY SANCTIONS.—In the case
21 of any determination referred to in paragraph (1),
22 the Secretary may pursue any other appropriate
23 penalties under section 503.

24 (3) WAIVER.—The President may waive the im-
25 position of sanctions under paragraph (1) on a per-

1 son with respect to an item if the President certifies
2 to Congress that—

3 (A) the item is essential to the national se-
4 curity of the United States; and

5 (B) such person is a sole source supplier of
6 the item, the item is not available from any al-
7 ternative reliable supplier, and the need for the
8 item cannot be met in a timely manner by im-
9 proved manufacturing processes or technological
10 developments.

11 (b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-
12 NOLOGY BY FOREIGN PERSONS.—

13 (1) SANCTIONS.—

14 (A) IN GENERAL.—Subject to paragraphs
15 (3) through (7), if the President determines
16 that a foreign person, after the date of enact-
17 ment of this section, knowingly—

18 (i) exports, transfers, or otherwise en-
19 gages in the trade of any MTCR equip-
20 ment or technology that contributes to the
21 design, development, or production of mis-
22 siles in a country that is not an MTCR ad-
23 herent and would be, if it were United
24 States-origin equipment or technology,

1 subject to the jurisdiction of the United
2 States under this Act,

3 (ii) conspires to or attempts to engage
4 in such export, transfer, or trade, or

5 (iii) facilitates such export, transfer,
6 or trade by any other person,

7 or if the President has made a determination
8 with respect to a foreign person under section
9 73(a) of the Arms Export Control Act, then the
10 President shall impose on that foreign person
11 the applicable sanctions under subparagraph
12 (B).

13 (B) SANCTIONS DESCRIBED.—The sanc-
14 tions which apply to a foreign person under
15 subparagraph (A) are the following:

16 (i) If the item involved in the export,
17 transfer, or trade is within category II of
18 the MTCR Annex, then the President shall
19 deny, for a period of 2 years, licenses for
20 the transfer to such foreign person of mis-
21 sile equipment or technology the export of
22 which is controlled under this Act.

23 (ii) If the item involved in the export,
24 transfer, or trade is within category I of
25 the MTCR Annex, then the President shall

1 deny, for a period of not less than 2 years,
2 licenses for the transfer to such foreign
3 person of items the export of which is con-
4 trolled under this Act.

5 (iii) If, in addition to actions taken
6 under clauses (i) and (ii), the President de-
7 termines that the export, transfer, or trade
8 has substantially contributed to the design,
9 development, or production of missiles in a
10 country that is not an MTCR adherent,
11 then the President shall prohibit, for a pe-
12 riod of not less than 2 years, the importa-
13 tion into the United States of products
14 produced by that foreign person.

15 (2) INAPPLICABILITY WITH RESPECT TO MTCR
16 ADHERENTS.—Paragraph (1) does not apply with
17 respect to—

18 (A) any export, transfer, or trading activ-
19 ity that is authorized by the laws of an MTCR
20 adherent, if such authorization is not obtained
21 by misrepresentation or fraud; or

22 (B) any export, transfer, or trade of an
23 item to an end user in a country that is an
24 MTCR adherent.

1 (3) EFFECT OF ENFORCEMENT ACTIONS BY
2 MTCR ADHERENTS.—Sanctions set forth in para-
3 graph (1) may not be imposed under this subsection
4 on a person with respect to acts described in such
5 paragraph or, if such sanctions are in effect against
6 a person on account of such acts, such sanctions
7 shall be terminated, if an MTCR adherent is taking
8 judicial or other enforcement action against that
9 person with respect to such acts, or that person has
10 been found by the government of an MTCR adher-
11 ent to be innocent of wrongdoing with respect to
12 such acts.

13 (4) ADVISORY OPINIONS.—The Secretary, in
14 consultation with the Secretary of State and the
15 Secretary of Defense, may, upon the request of any
16 person, issue an advisory opinion to that person as
17 to whether a proposed activity by that person would
18 subject that person to sanctions under this sub-
19 section. Any person who relies in good faith on such
20 an advisory opinion which states that the proposed
21 activity would not subject a person to such sanc-
22 tions, and any person who thereafter engages in
23 such activity, may not be made subject to such sanc-
24 tions on account of such activity.

25 (5) WAIVER AND REPORT TO CONGRESS.—

1 (A) WAIVER.—In any case other than one
2 in which an advisory opinion has been issued
3 under paragraph (4) stating that a proposed ac-
4 tivity would not subject a person to sanctions
5 under this subsection, the President may waive
6 the application of paragraph (1) to a foreign
7 person if the President determines that such
8 waiver is essential to the national security of
9 the United States.

10 (B) REPORT TO CONGRESS.—In the event
11 that the President decides to apply the waiver
12 described in subparagraph (A), the President
13 shall so notify Congress not less than 20 work-
14 ing days before issuing the waiver. Such notifi-
15 cation shall include a report fully articulating
16 the rationale and circumstances which led the
17 President to apply the waiver.

18 (6) ADDITIONAL WAIVER.—The President may
19 waive the imposition of sanctions under paragraph
20 (1) on a person with respect to a product or service
21 if the President certifies to the Congress that—

22 (A) the product or service is essential to
23 the national security of the United States; and

24 (B) such person is a sole source supplier of
25 the product or service, the product or service is

1 not available from any alternative reliable sup-
2 plier, and the need for the product or service
3 cannot be met in a timely manner by improved
4 manufacturing processes or technological devel-
5 opments.

6 (7) EXCEPTIONS.—The President shall not
7 apply the sanction under this subsection prohibiting
8 the importation of the products of a foreign
9 person—

10 (A) in the case of procurement of defense
11 articles or defense services—

12 (i) under existing contracts or sub-
13 contracts, including the exercise of options
14 for production quantities to satisfy require-
15 ments essential to the national security of
16 the United States;

17 (ii) if the President determines that
18 the person to which the sanctions would be
19 applied is a sole source supplier of the de-
20 fense articles and services, that the defense
21 articles or services are essential to the na-
22 tional security of the United States, and
23 that alternative sources are not readily or
24 reasonably available; or

1 (iii) if the President determines that
2 such articles or services are essential to the
3 national security of the United States
4 under defense coproduction agreements or
5 NATO Programs of Cooperation;

6 (B) to products or services provided under
7 contracts entered into before the date on which
8 the President publishes his intention to impose
9 the sanctions; or

10 (C) to—

11 (i) spare parts,

12 (ii) component parts, but not finished
13 products, essential to United States prod-
14 ucts or production,

15 (iii) routine services and maintenance
16 of products, to the extent that alternative
17 sources are not readily or reasonably avail-
18 able, or

19 (iv) information and technology essen-
20 tial to United States products or produc-
21 tion.

22 (c) DEFINITIONS.—In this section:

23 (1) MISSILE.—The term “missile” means a cat-
24 egory I system as defined in the MTCR Annex, and
25 any other unmanned delivery system of similar capa-

1 bility, as well as the specially designed production
2 facilities for these systems.

3 (2) MISSILE TECHNOLOGY CONTROL REGIME;
4 MTCR.—The term “Missile Technology Control Re-
5 gime” or “MTCR” means the policy statement, be-
6 tween the United States, the United Kingdom, the
7 Federal Republic of Germany, France, Italy, Can-
8 ada, and Japan, announced on April 16, 1987, to re-
9 strict sensitive missile-relevant transfers based on
10 the MTCR Annex, and any amendments thereto.

11 (3) MTCR ADHERENT.—The term “MTCR ad-
12 herent” means a country that participates in the
13 MTCR or that, pursuant to an international under-
14 standing to which the United States is a party, con-
15 trols MTCR equipment or technology in accordance
16 with the criteria and standards set forth in the
17 MTCR.

18 (4) MTCR ANNEX.—The term “MTCR Annex”
19 means the Guidelines and Equipment and Tech-
20 nology Annex of the MTCR, and any amendments
21 thereto.

22 (5) MISSILE EQUIPMENT OR TECHNOLOGY;
23 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
24 “missile equipment or technology” and “MTCR

1 equipment or technology” mean those items listed in
2 category I or category II of the MTCR Annex.

3 (6) FOREIGN PERSON.—The term “foreign per-
4 son” means any person other than a United States
5 person.

6 (7) PERSON.—

7 (A) IN GENERAL.—The term “person”
8 means a natural person as well as a corpora-
9 tion, business association, partnership, society,
10 trust, any other nongovernmental entity, orga-
11 nization, or group, and any governmental entity
12 operating as a business enterprise, and any suc-
13 cessor of any such entity.

14 (B) IDENTIFICATION IN CERTAIN CASES.—
15 In the case of countries where it may be impos-
16 sible to identify a specific governmental entity
17 referred to in subparagraph (A), the term “per-
18 son” means—

19 (i) all activities of that government re-
20 lating to the development or production of
21 any missile equipment or technology; and

22 (ii) all activities of that government
23 affecting the development or production of
24 aircraft, electronics, and space systems or
25 equipment.

1 produce, stockpile, or otherwise acquire chemical or
2 biological weapons.

3 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
4 CEIVING ASSISTANCE.—Paragraph (1) applies in the
5 case of—

6 (A) any foreign country that the President
7 determines has, at any time after the date of
8 enactment of this Act—

9 (i) used chemical or biological weap-
10 ons in violation of international law;

11 (ii) used lethal chemical or biological
12 weapons against its own nationals; or

13 (iii) made substantial preparations to
14 engage in the activities described in clause
15 (i) or (ii);

16 (B) any foreign country whose government
17 is determined for purposes of section 310 to be
18 a government that has repeatedly provided sup-
19 port for acts of international terrorism; or

20 (C) any other foreign country, project, or
21 entity designated by the President for purposes
22 of this section.

23 (3) PERSONS AGAINST WHICH SANCTIONS ARE
24 TO BE IMPOSED.—Sanctions shall be imposed pursu-
25 ant to paragraph (1) on—

1 (A) the foreign person with respect to
2 which the President makes the determination
3 described in that paragraph;

4 (B) any successor entity to that foreign
5 person;

6 (C) any foreign person that is a parent or
7 subsidiary of that foreign person if that parent
8 or subsidiary knowingly assisted in the activities
9 which were the basis of that determination; and

10 (D) any foreign person that is an affiliate
11 of that foreign person if that affiliate knowingly
12 assisted in the activities which were the basis of
13 that determination and if that affiliate is con-
14 trolled in fact by that foreign person.

15 (b) CONSULTATIONS WITH AND ACTIONS BY FOR-
16 EIGN GOVERNMENT OF JURISDICTION.—

17 (1) CONSULTATIONS.—If the President makes
18 the determinations described in subsection (a)(1)
19 with respect to a foreign person, Congress urges the
20 President to initiate consultations immediately with
21 the government with primary jurisdiction over that
22 foreign person with respect to the imposition of
23 sanctions pursuant to this section.

24 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
25 TION.—In order to pursue such consultations with

1 that government, the President may delay imposition
2 of sanctions pursuant to this section for a period of
3 up to 90 days. Following the consultations, the
4 President shall impose sanctions unless the Presi-
5 dent determines and certifies to Congress that gov-
6 ernment has taken specific and effective actions, in-
7 cluding appropriate penalties, to terminate the in-
8 volvement of the foreign person in the activities de-
9 scribed in subsection (a)(1). The President may
10 delay imposition of sanctions for an additional pe-
11 riod of up to 90 days if the President determines
12 and certifies to Congress that government is in the
13 process of taking the actions described in the pre-
14 ceding sentence.

15 (3) REPORT TO CONGRESS.—The President
16 shall report to Congress, not later than 90 days
17 after making a determination under subsection
18 (a)(1), on the status of consultations with the appro-
19 priate government under this subsection, and the
20 basis for any determination under paragraph (2) of
21 this subsection that such government has taken spe-
22 cific corrective actions.

23 (c) SANCTIONS.—

24 (1) DESCRIPTION OF SANCTIONS.—The sanc-
25 tions to be imposed pursuant to subsection (a)(1)

1 are, except as provided in paragraph (2) of this sub-
2 section, the following:

3 (A) PROCUREMENT SANCTION.—The
4 United States Government shall not procure, or
5 enter into any contract for the procurement of,
6 any goods or services from any person described
7 in subsection (a)(3).

8 (B) IMPORT SANCTIONS.—The importation
9 into the United States of products produced by
10 any person described in subsection (a)(3) shall
11 be prohibited.

12 (2) EXCEPTIONS.—The President shall not be
13 required to apply or maintain sanctions under this
14 section—

15 (A) in the case of procurement of defense
16 articles or defense services—

17 (i) under existing contracts or sub-
18 contracts, including the exercise of options
19 for production quantities to satisfy United
20 States operational military requirements;

21 (ii) if the President determines that
22 the person or other entity to which the
23 sanctions would otherwise be applied is a
24 sole source supplier of the defense articles
25 or services, that the defense articles or

1 services are essential, and that alternative
2 sources are not readily or reasonably avail-
3 able; or

4 (iii) if the President determines that
5 such articles or services are essential to the
6 national security under defense coproduc-
7 tion agreements;

8 (B) to products or services provided under
9 contracts entered into before the date on which
10 the President publishes his intention to impose
11 sanctions;

12 (C) to—

13 (i) spare parts,

14 (ii) component parts, but not finished
15 products, essential to United States prod-
16 ucts or production, or

17 (iii) routine servicing and mainte-
18 nance of products, to the extent that alter-
19 native sources are not readily or reason-
20 ably available;

21 (D) to information and technology essen-
22 tial to United States products or production; or

23 (E) to medical or other humanitarian
24 items.

1 (d) TERMINATION OF SANCTIONS.—The sanctions
2 imposed pursuant to this section shall apply for a period
3 of at least 12 months following the imposition of sanctions
4 and shall cease to apply thereafter only if the President
5 determines and certifies to the Congress that reliable in-
6 formation indicates that the foreign person with respect
7 to which the determination was made under subsection
8 (a)(1) has ceased to aid or abet any foreign government,
9 project, or entity in its efforts to acquire chemical or bio-
10 logical weapons capability as described in that subsection.

11 (e) WAIVER.—

12 (1) CRITERION FOR WAIVER.—The President
13 may waive the application of any sanction imposed
14 on any person pursuant to this section, after the end
15 of the 12-month period beginning on the date on
16 which that sanction was imposed on that person, if
17 the President determines and certifies to Congress
18 that such waiver is important to the national secu-
19 rity interests of the United States.

20 (2) NOTIFICATION OF AND REPORT TO CON-
21 GRESS.—If the President decides to exercise the
22 waiver authority provided in paragraph (1), the
23 President shall so notify the Congress not less than
24 20 days before the waiver takes effect. Such notifica-
25 tion shall include a report fully articulating the ra-

1 tionale and circumstances which led the President to
2 exercise the waiver authority.

3 (f) DEFINITION OF FOREIGN PERSON.—For the pur-
4 poses of this section, the term “foreign person” means—

5 (1) an individual who is not a citizen of the
6 United States or an alien admitted for permanent
7 residence to the United States; or

8 (2) a corporation, partnership, or other entity
9 which is created or organized under the laws of a
10 foreign country or which has its principal place of
11 business outside the United States.

12 **SEC. 506. ENFORCEMENT.**

13 (a) GENERAL AUTHORITY AND DESIGNATION.—

14 (1) POLICY GUIDANCE ON ENFORCEMENT.—
15 The Secretary, in consultation with the Secretary of
16 the Treasury and the heads of other departments
17 and agencies that the Secretary considers appro-
18 priate, shall be responsible for providing policy guid-
19 ance on the enforcement of this Act.

20 (2) GENERAL AUTHORITIES.—

21 (A) EXERCISE OF AUTHORITY.—To the ex-
22 tent necessary or appropriate to the enforce-
23 ment of this Act, officers and employees of the
24 Department designated by the Secretary, offi-
25 cers and employees of the United States Cus-

1 toms Service designated by the Commissioner of
2 Customs, and officers and employees of any
3 other department or agency designated by the
4 head of a department or agency exercising func-
5 tions under this Act, may exercise the enforce-
6 ment authority under paragraph (3).

7 (B) CUSTOMS SERVICE.—In carrying out
8 enforcement authority under paragraph (3), the
9 Commissioner of Customs and employees of the
10 United States Customs Service designated by
11 the Commissioner may make investigations
12 within or outside the United States and at
13 ports of entry into or exit from the United
14 States where officers of the United States cus-
15 toms Service are authorized by law to carry out
16 law enforcement responsibilities. Subject to
17 paragraph (3), the United States Customs
18 Service is authorized, in the enforcement of this
19 Act, to search, detain (after search), and seize
20 items at the ports of entry into or exit from
21 the United States where officers of the United
22 States Customs Service are authorized by law
23 to conduct searches, detentions, and seizures,
24 and at the places outside the United States
25 where the United States Customs Service, pur-

1 suant to agreement or other arrangement with
2 other countries, is authorized to perform en-
3 forcement activities.

4 (C) OTHER EMPLOYEES.—In carrying out
5 enforcement authority under paragraph (3), the
6 Secretary and officers and employees of the De-
7 partment designated by the Secretary may
8 make investigations within the United States,
9 and may conduct, outside the United States,
10 pre-license and post-shipment verifications of
11 controlled items and investigations in the en-
12 forcement of section 502. The Secretary and of-
13 ficers and employees of the Department des-
14 ignated by the Secretary are authorized to
15 search, detain (after search), and seize items at
16 places within the United States other than
17 ports referred to in subparagraph (B). The
18 search, detention (after search), or seizure of
19 items at the ports and places referred to in sub-
20 paragraph (B) may be conducted by officers
21 and employees of the Department only with the
22 concurrence of the Commissioner of Customs or
23 a person designated by the Commissioner.

24 (D) AGREEMENTS AND ARRANGEMENTS.—
25 The Secretary and the Commissioner of Cus-

1 toms may enter into agreements and arrange-
2 ments for the enforcement of this Act, including
3 foreign investigations and information ex-
4 change.

5 (3) SPECIFIC AUTHORITIES.—

6 (A) ACTIONS BY ANY DESIGNATED PER-
7 SONNEL.—Any officer or employee designated
8 under paragraph (2), in carrying out the en-
9 forcement authority under this Act, may do the
10 following:

11 (i) Make investigations of, obtain in-
12 formation from, make inspection of any
13 books, records, or reports (including any
14 writings required to be kept by the Sec-
15 retary), premises, or property of, and take
16 the sworn testimony of, any person.

17 (ii) Administer oaths or affirmations,
18 and by subpoena require any person to ap-
19 pear and testify or to appear and produce
20 books, records, and other writings, or both.
21 In the case of contumacy by, or refusal to
22 obey a subpoena issued to, any such per-
23 son, a district court of the United States,
24 on request of the Attorney General and
25 after notice to any such person and a hear-

1 ing, shall have jurisdiction to issue an
2 order requiring such person to appear and
3 give testimony or to appear and produce
4 books, records, and other writings, or both.
5 Any failure to obey such order of the court
6 may be punished by such court as a con-
7 tempt thereof. The attendance of witnesses
8 and the production of documents provided
9 for in this clause may be required from
10 any State, the District of Columbia, or in
11 any territory of the United States at any
12 designated place. Witnesses subpoenaed
13 under this subsection shall be paid the
14 same fees and mileage allowance as paid
15 witnesses in the district courts of the
16 United States.

17 (B) ACTIONS BY OFFICE OF EXPORT EN-
18 FORCEMENT AND CUSTOMS SERVICE PER-
19 SONNEL.—

20 (i) OFFICE OF EXPORT ENFORCE-
21 MENT AND CUSTOMS SERVICE PER-
22 SONNEL.—Any officer or employee of the
23 Office of Export Enforcement of the De-
24 partment of Commerce (in this Act re-
25 ferred to as “OEE”) who is designated by

1 the Secretary under paragraph (2), and
2 any officer or employee of the United
3 States Customs Service who is designated
4 by the Commissioner of Customs under
5 paragraph (2), may do the following in
6 carrying out the enforcement authority
7 under this Act:

8 (I) Execute any warrant or other
9 process issued by a court or officer of
10 competent jurisdiction with respect to
11 the enforcement of this Act.

12 (II) Make arrests without war-
13 rant for any violation of this Act com-
14 mitted in his or her presence or view,
15 or if the officer or employee has prob-
16 able cause to believe that the person
17 to be arrested has committed, is com-
18 mitting, or is about to commit such a
19 violation.

20 (III) Carry firearms.

21 (ii) OEE PERSONNEL.—Any officer or
22 employee of the OEE designated by the
23 Secretary under paragraph (2) shall exer-
24 cise the authority set forth in clause (i)

1 pursuant to guidelines approved by the At-
2 torney General.

3 (C) OTHER ACTIONS BY CUSTOMS SERVICE
4 PERSONNEL.—Any officer or employee of the
5 United States Customs Service designated by
6 the Commissioner of Customs under paragraph
7 (2) may do the following in carrying out the en-
8 forcement authority under this Act:

9 (i) Stop, search, and examine a vehi-
10 cle, vessel, aircraft, or person on which or
11 whom the officer or employee has reason-
12 able cause to suspect there is any item
13 that has been, is being, or is about to be
14 exported from or transited through the
15 United States in violation of this Act.

16 (ii) Detain and search any package or
17 container in which the officer or employee
18 has reasonable cause to suspect there is
19 any item that has been, is being, or is
20 about to be exported from or transited
21 through the United States in violation of
22 this Act.

23 (iii) Detain (after search) or seize any
24 item, for purposes of securing for trial or
25 forfeiture to the United States, on or

1 about such vehicle, vessel, aircraft, or per-
2 son or in such package or container, if the
3 officer or employee has probable cause to
4 believe the item has been, is being, or is
5 about to be exported from or transited
6 through the United States in violation of
7 this Act.

8 (4) OTHER AUTHORITIES NOT AFFECTED.—The
9 authorities conferred by this section are in addition
10 to any authorities conferred under other laws.

11 (b) FORFEITURE.—

12 (1) IN GENERAL.—Any tangible items lawfully
13 seized under subsection (a) by designated officers or
14 employees shall be subject to forfeiture to the United
15 States.

16 (2) APPLICABLE LAWS.—Those provisions of
17 law relating to—

18 (A) the seizure, summary and judicial for-
19 feiture, and condemnation of property for viola-
20 tions of the customs laws;

21 (B) the disposition of such property or the
22 proceeds from the sale thereof;

23 (C) the remission or mitigation of such for-
24 feitures; and

25 (D) the compromise of claims,

1 shall apply to seizures and forfeitures incurred, or
2 alleged to have been incurred, under the provisions
3 of this subsection, insofar as applicable and not in-
4 consistent with this Act.

5 (3) FORFEITURES UNDER CUSTOMS LAWS.—
6 Duties that are imposed upon a customs officer or
7 any other person with respect to the seizure and for-
8 feiture of property under the customs laws may be
9 performed with respect to seizures and forfeitures of
10 property under this subsection by the Secretary or
11 any officer or employee of the Department that may
12 be authorized or designated for that purpose by the
13 Secretary (or by the Commissioner of Customs or
14 any officer or employee of the United States Cus-
15 toms Service designated by the Commissioner), or,
16 upon the request of the Secretary, by any other
17 agency that has authority to manage and dispose of
18 seized property.

19 (c) REFERRAL OF CASES.—All cases involving viola-
20 tions of this Act shall be referred to the Secretary for pur-
21 poses of determining civil penalties and administrative
22 sanctions under section 503 or to the Attorney General
23 for criminal action in accordance with this Act or to both
24 the Secretary and the Attorney General.

25 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

1 (1) USE OF FUNDS.—With respect to any un-
2 dercover investigative operation conducted by the
3 OEE that is necessary for the detection and pros-
4 ecution of violations of this Act—

5 (A) funds made available for export en-
6 forcement under this Act may be used to pur-
7 chase property, buildings, and other facilities,
8 and to lease equipment, conveyances, and space
9 within the United States, without regard to sec-
10 tions 1341 and 3324 of title 31, United States
11 Code, the third undesignated paragraph under
12 the heading of “miscellaneous” of the Act of
13 March 3, 1877, (40 U.S.C. 34), sections
14 3732(a) and 3741 of the Revised Statutes of
15 the United States (41 U.S.C. 11(a) and 22),
16 subsections (a) and (c) of section 304 of the
17 Federal Property and Administrative Services
18 Act of 1949 (41 U.S.C. 254 (a) and (c)), and
19 section 305 of the Federal Property and Ad-
20 ministrative Services Act of 1949 (41 U.S.C.
21 255);

22 (B) funds made available for export en-
23 forcement under this Act may be used to estab-
24 lish or to acquire proprietary corporations or
25 business entities as part of an undercover oper-

1 ation, and to operate such corporations or busi-
2 ness entities on a commercial basis, without re-
3 gard to sections 1341, 3324, and 9102 of title
4 31, United States Code;

5 (C) funds made available for export en-
6 forcement under this Act and the proceeds from
7 undercover operations may be deposited in
8 banks or other financial institutions without re-
9 gard to the provisions of section 648 of title 18,
10 United States Code, and section 3302 of title
11 31, United States Code; and

12 (D) the proceeds from undercover oper-
13 ations may be used to offset necessary and rea-
14 sonable expenses incurred in such operations
15 without regard to the provisions of section 3302
16 of title 31, United States Code,

17 if the Director of OEE (or an officer or employee
18 designated by the Director) certifies, in writing, that
19 the action authorized by subparagraph (A), (B), (C),
20 or (D) for which the funds would be used is nec-
21 essary for the conduct of the undercover operation.

22 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
23 corporation or business entity established or ac-
24 quired as part of an undercover operation has a net
25 value of more than \$250,000 and is to be liquidated,

1 sold, or otherwise disposed of, the Director of OEE
2 shall report the circumstances to the Secretary and
3 the Comptroller General of the United States as
4 much in advance of such disposition as the Director
5 of the OEE (or the Director's designee) determines
6 is practicable. The proceeds of the liquidation, sale,
7 or other disposition, after obligations incurred by the
8 corporation or business enterprise are met, shall be
9 deposited in the Treasury of the United States as
10 miscellaneous receipts. Any property or equipment
11 purchased pursuant to paragraph (1) may be re-
12 tained for subsequent use in undercover operations
13 under this section. When such property or equip-
14 ment is no longer needed, it shall be considered sur-
15 plus and disposed of as surplus government prop-
16 erty.

17 (3) DEPOSIT OF PROCEEDS.—As soon as the
18 proceeds from an OEE undercover investigative op-
19 eration with respect to which an action is authorized
20 and carried out under this subsection are no longer
21 needed for the conduct of such operation, the pro-
22 ceeds or the balance of the proceeds remaining at
23 the time shall be deposited into the Treasury of the
24 United States as miscellaneous receipts.

25 (4) AUDIT AND REPORT.—

1 (A) AUDIT.—The Director of OEE shall
2 conduct a detailed financial audit of each closed
3 OEE undercover investigative operation and
4 shall submit the results of the audit in writing
5 to the Secretary. Not later than 180 days after
6 an undercover operation is closed, the Secretary
7 shall submit to Congress a report on the results
8 of the audit.

9 (B) REPORT.—The Secretary shall submit
10 annually to Congress a report, which may be in-
11 cluded in the annual report under section 701,
12 specifying the following information:

13 (i) The number of undercover inves-
14 tigative operations pending as of the end of
15 the period for which such report is sub-
16 mitted.

17 (ii) The number of undercover inves-
18 tigative operations commenced in the 1-
19 year period preceding the period for which
20 such report is submitted.

21 (iii) The number of undercover inves-
22 tigative operations closed in the 1-year pe-
23 riod preceding the period for which such
24 report is submitted and, with respect to
25 each such closed undercover operation, the

1 results obtained and any civil claims made
2 with respect to the operation.

3 (5) DEFINITIONS.—For purposes of paragraph
4 (4)—

5 (A) the term “closed”, with respect to an
6 undercover investigative operation, refers to the
7 earliest point in time at which all criminal pro-
8 ceedings (other than appeals) pursuant to the
9 investigative operation are concluded, or covert
10 activities pursuant to such operation are con-
11 cluded, whichever occurs later; and

12 (B) the terms “undercover investigative
13 operation” and “undercover operation” mean
14 any undercover investigative operation con-
15 ducted by the OEE—

16 (i) in which the gross receipts (exclud-
17 ing interest earned) exceed \$25,000, or ex-
18 penditures (other than expenditures for
19 salaries of employees) exceed \$75,000, and

20 (ii) which is exempt from section 3302
21 or 9102 of title 31, United States Code,
22 except that clauses (i) and (ii) shall not
23 apply with respect to the report to Con-
24 gress required by paragraph (4)(B).

25 (e) WIRETAPS.—

1 (1) AUTHORITY.—Interceptions of communica-
2 tions in accordance with section 2516 of title 18,
3 United States Code, are authorized to further the
4 enforcement of this Act.

5 (2) CONFORMING AMENDMENT.—Section
6 2516(1) of title 18, United States Code, is amended
7 by adding at the end the following:

8 “(q)(i) any violation of, or conspiracy to
9 violate, the Export Administration Act of 2001
10 or the Export Administration Act of 1979.”.

11 (f) POST-SHIPMENT VERIFICATION.—The Secretary
12 shall target post-shipment verifications to exports involv-
13 ing the greatest risk to national security.

14 (g) REFUSAL TO ALLOW POST-SHIPMENT
15 VERIFICATION.—

16 (1) IN GENERAL.—If an end-user refuses to
17 allow post-shipment verification of a controlled item,
18 the Secretary shall deny a license for the export of
19 any controlled item to such end-user until such post-
20 shipment verification occurs.

21 (2) RELATED PERSONS.—The Secretary may
22 exercise the authority under paragraph (1) with re-
23 spect to any person related through affiliation, own-
24 ership, control, or position of responsibility, to any

1 end-user refusing to allow post-shipment verification
2 of a controlled item.

3 (3) REFUSAL BY COUNTRY.—If the country in
4 which the end-user is located refuses to allow post-
5 shipment verification of a controlled item, the Sec-
6 retary may deny a license for the export of that item
7 or any substantially identical or directly competitive
8 item or class of items to all end-users in that coun-
9 try until such post-shipment verification is allowed.

10 (h) FREIGHT FORWARDERS BEST PRACTICES PRO-
11 GRAM AUTHORIZATION.—There is authorized to be appro-
12 priated for the Department of Commerce \$3,500,000 and
13 such sums as may be necessary to hire 20 additional em-
14 ployees to assist United States freight forwarders and
15 other interested parties in developing and implementing,
16 on a voluntary basis, a “best practices” program to ensure
17 that exports of controlled items are undertaken in compli-
18 ance with this Act.

19 (i) END-USE VERIFICATION AUTHORIZATION.—

20 (1) IN GENERAL.—There is authorized to be
21 appropriated for the Department of Commerce
22 \$4,500,000 and such sums as may be necessary to
23 hire 10 additional overseas investigators to be posted
24 in the People’s Republic of China, the Russian Fed-
25 eration, the Hong Kong Special Administrative Re-

1 gion, the Republic of India, Singapore, Egypt, and
2 Taiwan, or any other place the Secretary deems ap-
3 propriate, for the purpose of verifying the end use
4 of high-risk, dual-use technology.

5 (2) REPORT.—Not later than 2 years after the
6 date of enactment of this Act and annually there-
7 after, the Department shall, in its annual report to
8 Congress on export controls, include a report on the
9 effectiveness of the end-use verification activities au-
10 thorized under subsection (a). The report shall in-
11 clude the following information:

12 (A) The activities of the overseas investiga-
13 tors of the Department.

14 (B) The types of goods and technologies
15 that were subject to end-use verification.

16 (C) The ability of the Department's inves-
17 tigators to detect the illegal transfer of high
18 risk, dual-use goods and technologies.

19 (3) ENHANCEMENTS.—In addition to the au-
20 thorization provided in paragraph (1), there is au-
21 thorized to be appropriated for the Department of
22 Commerce \$5,000,000 to enhance its program for
23 verifying the end use of items subject to controls
24 under this Act.

1 (j) ENHANCED COOPERATION WITH UNITED STATES
2 CUSTOMS SERVICE.—Consistent with the purposes of this
3 Act, the Secretary is authorized to undertake, in coopera-
4 tion with the United States Customs Service, such meas-
5 ures as may be necessary or required to enhance the abil-
6 ity of the United States to detect unlawful exports and
7 to enforce violations of this Act.

8 (k) REFERENCE TO ENFORCEMENT.—For purposes
9 of this section, a reference to the enforcement of this Act
10 or to a violation of this Act includes a reference to the
11 enforcement or a violation of any regulation, license, or
12 order issued under this Act.

13 (l) AUTHORIZATION FOR EXPORT LICENSING AND
14 ENFORCEMENT COMPUTER SYSTEM.—There is author-
15 ized to be appropriated for the Department \$5,000,000
16 and such other sums as may be necessary for planning,
17 design, and procurement of a computer system to replace
18 the Department's primary export licensing and computer
19 enforcement system.

20 (m) AUTHORIZATION FOR BUREAU OF EXPORT AD-
21 MINISTRATION.—The Secretary may authorize, without
22 fiscal year limitation, the expenditure of funds transferred
23 to, paid to, received by, or made available to the Bureau
24 of Export Administration as a reimbursement in accord-
25 ance with section 9703 of title 31, United States Code

1 (as added by Public Law 102–393). The Secretary may
2 also authorize, without fiscal year limitation, the expendi-
3 ture of funds transferred to, paid to, received by, or made
4 available to the Bureau of Export Administration as a re-
5 imbursement from the Department of Justice Assets For-
6 feiture Fund in accordance with section 524 of title 28,
7 United States Code. Such funds shall be deposited in an
8 account and shall remain available until expended.

9 (n) AMENDMENTS TO TITLE 31.—

10 (1) Section 9703(a) of title 31, United States
11 Code (as added by Public Law 102–393) is amended
12 by striking “or the United States Coast Guard” and
13 inserting “, the United States Coast Guard, or the
14 Bureau of Export Administration of the Department
15 of Commerce”.

16 (2) Section 9703(a)(2)(B)(i) of title 31, United
17 States Code is amended (as added by Public Law
18 102–393)—

19 (A) by striking “or” at the end of sub-
20 clause (I);

21 (B) by inserting “or” at the end of sub-
22 clause (II); and

23 (C) by inserting at the end, the following
24 new subclause:

1 “(III) a violation of the Export
2 Administration Act of 1979, the Ex-
3 port Administration Act of 2001, or
4 any regulation, license, or order issued
5 under those Acts;”.

6 (3) Section 9703(p)(1) of title 31, United
7 States Code (as added by Public Law 102–393) is
8 amended by adding at the end the following: “In ad-
9 dition, for purposes of this section, the Bureau of
10 Export Administration of the Department of Com-
11 merce shall be considered to be a Department of the
12 Treasury law enforcement organization.”.

13 (o) AUTHORIZATION FOR LICENSE REVIEW OFFI-
14 CERS.—

15 (1) IN GENERAL.—There is authorized to be
16 appropriated to the Department of Commerce
17 \$2,000,000 to hire additional license review officers.

18 (2) TRAINING.—There is authorized to be ap-
19 propriated to the Department of Commerce
20 \$2,000,000 to conduct professional training of li-
21 cense review officers, auditors, and investigators
22 conducting post-shipment verification checks. These
23 funds shall be used to—

1 (A) train and certify, through a formal
2 program, new employees entering these posi-
3 tions for the first time; and

4 (B) the ongoing professional training of ex-
5 perience employees on an as needed basis.

6 (p) AUTHORIZATION.—

7 (1) IN GENERAL.—There are authorized to be
8 appropriated to the Department of Commerce to
9 carry out the purposes of this Act—

10 (A) \$72,000,000 for the fiscal year 2002,
11 of which no less than \$27,701,000 shall be used
12 for compliance and enforcement activities;

13 (B) \$73,000,000 for the fiscal year 2003,
14 of which no less than \$28,312,000 shall be used
15 for compliance and enforcement activities;

16 (C) \$74,000,000 for the fiscal year 2004,
17 of which no less than \$28,939,000 shall be used
18 for compliance and enforcement activities;

19 (D) \$76,000,000 for the fiscal year 2005,
20 of which no less than \$29,582,000 shall be used
21 for compliance and enforcement activities; and

22 (E) such additional amounts, for each such
23 fiscal year, as may be necessary for increases in
24 salary, pay, retirement, other employee benefits

1 authorized by law, and other nondiscretionary
2 costs.

3 (2) LIMITATION.—The authority granted by
4 this Act shall terminate on September 30, 2004, un-
5 less the President carries out the following duties:

6 (A) Provides to Congress a detailed report
7 on—

8 (i) the implementation and operation
9 of this Act; and

10 (ii) the operation of United States ex-
11 port controls in general.

12 (B)(i) Provides to Congress legislative re-
13 form proposals in connection with the report
14 described in subparagraph (A); or

15 (ii) certifies to Congress that no legislative
16 reforms are necessary in connection with such
17 report.

18 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

19 (a) EXEMPTIONS FROM ADMINISTRATIVE PROCE-
20 DURE.—Except as provided in this section, the functions
21 exercised under this Act are excluded from the operation
22 of sections 551, 553 through 559, and 701 through 706
23 of title 5, United States Code.

24 (b) PROCEDURES RELATING TO CIVIL PENALTIES
25 AND SANCTIONS.—

1 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
2 ministrative sanction imposed under section 503
3 may be imposed only after notice and opportunity
4 for an agency hearing on the record in accordance
5 with sections 554 through 557 of title 5, United
6 States Code. The imposition of any such administra-
7 tive sanction shall be subject to judicial review in ac-
8 cordance with sections 701 through 706 of title 5,
9 United States Code, except that the review shall be
10 initiated in the United States Court of Appeals for
11 the District of Columbia Circuit, which shall have
12 jurisdiction of the review.

13 (2) AVAILABILITY OF CHARGING LETTER.—Any
14 charging letter or other document initiating adminis-
15 trative proceedings for the imposition of sanctions
16 for violations of the regulations issued under section
17 502 shall be made available for public inspection and
18 copying.

19 (c) COLLECTION.—If any person fails to pay a civil
20 penalty imposed under section 503, the Secretary may ask
21 the Attorney General to commence a civil action in an ap-
22 propriate district court of the United States to recover the
23 amount imposed (plus interest at currently prevailing
24 rates from the date of the final order). No such action
25 may be commenced more than 5 years after the order im-

1 posing the civil penalty becomes final. In such an action,
2 the validity, amount, and appropriateness of such penalty
3 shall not be subject to review.

4 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

5 (1) GROUNDS FOR IMPOSITION.—In any case in
6 which there is reasonable cause to believe that a per-
7 son is engaged in or is about to engage in any act
8 or practice which constitutes or would constitute a
9 violation of this Act, or any regulation, order, or li-
10 cense issued under this Act, including any diversion
11 of goods or technology from an authorized end use
12 or end user, and in any case in which a criminal in-
13 dictment has been returned against a person alleging
14 a violation of this Act or any of the statutes listed
15 in section 503, the Secretary may, without a hear-
16 ing, issue an order temporarily denying that person’s
17 United States export privileges (hereafter in this
18 subsection referred to as a “temporary denial
19 order”). A temporary denial order shall be effective
20 for such period (not in excess of 180 days) as the
21 Secretary specifies in the order, but may be renewed
22 by the Secretary, following notice and an oppor-
23 tunity for a hearing, for additional periods of not
24 more than 180 days each.

1 (2) ADMINISTRATIVE APPEALS.—The person or
2 persons subject to the issuance or renewal of a tem-
3 porary denial order may appeal the issuance or re-
4 newal of the temporary denial order, supported by
5 briefs and other material, to an administrative law
6 judge who shall, within 15 working days after the
7 appeal is filed, issue a decision affirming, modifying,
8 or vacating the temporary denial order. The tem-
9 porary denial order shall be affirmed if it is shown
10 that—

11 (A) there is reasonable cause to believe
12 that the person subject to the order is engaged
13 in or is about to engage in any act or practice
14 that constitutes or would constitute a violation
15 of this Act, or any regulation, order, or license
16 issued under this Act; or

17 (B) a criminal indictment has been re-
18 turned against the person subject to the order
19 alleging a violation of this Act or any of the
20 statutes listed in section 503.

21 The decision of the administrative law judge shall be
22 final unless, within 10 working days after the date
23 of the administrative law judge’s decision, an appeal
24 is filed with the Secretary. On appeal, the Secretary
25 shall either affirm, modify, reverse, or vacate the de-

1 cision of the administrative law judge by written
2 order within 10 working days after receiving the ap-
3 peal. The written order of the Secretary shall be
4 final and is not subject to judicial review, except as
5 provided in paragraph (3). The materials submitted
6 to the administrative law judge and the Secretary
7 shall constitute the administrative record for pur-
8 poses of review by the court.

9 (3) COURT APPEALS.—An order of the Sec-
10 retary affirming, in whole or in part, the issuance or
11 renewal of a temporary denial order may, within 15
12 days after the order is issued, be appealed by a per-
13 son subject to the order to the United States Court
14 of Appeals for the District of Columbia Circuit,
15 which shall have jurisdiction of the appeal. The
16 court may review only those issues necessary to de-
17 termine whether the issuance of the temporary de-
18 nial order was based on reasonable cause to believe
19 that the person subject to the order was engaged
20 in or was about to engage in any act or practice
21 that constitutes or would constitute a violation of
22 this title, or any regulation, order, or license issued
23 under this Act, or whether a criminal indictment has
24 been returned against the person subject to the
25 order alleging a violation of this Act or of any of

1 the statutes listed in section 503. The court shall
2 vacate the Secretary's order if the court finds that
3 the Secretary's order is arbitrary, capricious, an
4 abuse of discretion, or otherwise not in accordance
5 with law.

6 (e) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-
7 MATION.—Any classified information that is included in
8 the administrative record that is subject to review pursu-
9 ant to subsection (b)(1) or (d)(3) may be reviewed by the
10 court only on an ex parte basis and in camera.

11 **TITLE VI—EXPORT CONTROL** 12 **AUTHORITY AND REGULATIONS**

13 **SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-** 14 **TIONS.**

15 (a) EXPORT CONTROL AUTHORITY.—

16 (1) IN GENERAL.—Unless otherwise reserved to
17 the President or a department (other than the De-
18 partment) or agency of the United States, all power,
19 authority, and discretion conferred by this Act shall
20 be exercised by the Secretary.

21 (2) DELEGATION OF FUNCTIONS OF THE SEC-
22 RETARY.—The Secretary may delegate any function
23 under this Act, unless otherwise provided, to the
24 Under Secretary of Commerce for Export Adminis-
25 tration or to any other officer of the Department.

1 (b) UNDER SECRETARY OF COMMERCE; ASSISTANT
2 SECRETARIES.—

3 (1) UNDER SECRETARY OF COMMERCE.—There
4 shall be within the Department an Under Secretary
5 of Commerce for Export Administration (in this sec-
6 tion referred to as the “Under Secretary”) who shall
7 be appointed by the President, by and with the ad-
8 vice and consent of the Senate. The Under Secretary
9 shall carry out all functions of the Secretary under
10 this Act and other provisions of law relating to na-
11 tional security, as the Secretary may delegate.

12 (2) ADDITIONAL ASSISTANT SECRETARIES.—In
13 addition to the number of Assistant Secretaries oth-
14 erwise authorized for the Department of Commerce,
15 there shall be within the Department of Commerce
16 the following Assistant Secretaries of Commerce:

17 (A) An Assistant Secretary for Export Ad-
18 ministration who shall be appointed by the
19 President, by and with the advice and consent
20 of the Senate, and who shall assist the Sec-
21 retary and the Under Secretary in carrying out
22 functions relating to export listing and licens-
23 ing.

24 (B) An Assistant Secretary for Export En-
25 forcement who shall be appointed by the Presi-

1 dent, by and with the advice and consent of the
2 Senate, and who shall assist the Secretary and
3 the Under Secretary in carrying out functions
4 relating to export enforcement.

5 (e) ISSUANCE OF REGULATIONS.—

6 (1) IN GENERAL.—The President and the Sec-
7 retary may issue such regulations as are necessary
8 to carry out this Act. Any such regulations the pur-
9 pose of which is to carry out title II or title III may
10 be issued only after the regulations are submitted
11 for review to such departments or agencies as the
12 President considers appropriate. The Secretary shall
13 consult with the appropriate export control advisory
14 committee appointed under section 105(a) in formu-
15 lating regulations under this title. The second sen-
16 tence of this subsection does not require the concur-
17 rence or approval of any official, department, or
18 agency to which such regulations are submitted.

19 (2) AMENDMENTS TO REGULATIONS.—If the
20 Secretary proposes to amend regulations issued
21 under this Act, the Secretary shall report to the
22 Committee on Banking, Housing, and Urban Affairs
23 of the Senate and the Committee on International
24 Relations of the House of Representatives on the in-
25 tent and rationale of such amendments. Such report

1 shall evaluate the cost and burden to the United
2 States exporters of the proposed amendments in re-
3 lation to any enhancement of licensing objectives.
4 The Secretary shall consult with the appropriate ex-
5 port control advisory committees appointed under
6 section 105(a) in amending regulations issued under
7 this Act.

8 **SEC. 602. CONFIDENTIALITY OF INFORMATION.**

9 (a) EXEMPTIONS FROM DISCLOSURE.—

10 (1) INFORMATION OBTAINED ON OR BEFORE
11 JUNE 30, 1980.—Except as otherwise provided by the
12 third sentence of section 502(c)(2) and by section
13 507(b)(2), information obtained under the Export
14 Administration Act of 1979, or any predecessor stat-
15 ute, on or before June 30, 1980, which is deemed
16 confidential, including Shipper's Export Declara-
17 tions, or with respect to which a request for con-
18 fidential treatment is made by the person furnishing
19 such information, shall not be subject to disclosure
20 under section 552 of title 5, United States Code,
21 and such information shall not be published or dis-
22 closed, unless the Secretary determines that the
23 withholding thereof is contrary to the national inter-
24 est.

1 (2) INFORMATION OBTAINED AFTER JUNE 30,
2 1980.—Except as otherwise provided by the third
3 sentence of section 502(c)(2) and by section
4 507(b)(2), information obtained under this Act,
5 under the Export Administration Act of 1979 after
6 June 30, 1980, or under the Export Administration
7 regulations as maintained and amended under the
8 authority of the International Emergency Economic
9 Powers Act (50 U.S.C. 1706), may be withheld from
10 disclosure only to the extent permitted by statute,
11 except that information submitted, obtained, or con-
12 sidered in connection with an application for an ex-
13 port license or other export authorization (or record-
14 keeping or reporting requirement) under the Export
15 Administration Act of 1979, under this Act, or
16 under the Export Administration regulations as
17 maintained and amended under the authority of the
18 International Emergency Economic Powers Act (50
19 U.S.C. 1706), including—

20 (A) the export license or other export au-
21 thorization itself,

22 (B) classification requests described in sec-
23 tion 401(h),

24 (C) information or evidence obtained in the
25 course of any investigation,

1 (D) information obtained or furnished
2 under title V in connection with any inter-
3 national agreement, treaty, or other obligation,
4 and

5 (E) information obtained in making the
6 determinations set forth in section 211 of this
7 Act,

8 and information obtained in any investigation of an
9 alleged violation of section 502 of this Act except for
10 information required to be disclosed by section
11 502(c)(2) or 507(b)(2) of this Act, shall be withheld
12 from public disclosure and shall not be subject to
13 disclosure under section 552 of title 5, United States
14 Code, unless the release of such information is deter-
15 mined by the Secretary to be in the national inter-
16 est.

17 (b) INFORMATION TO CONGRESS AND GAO.—

18 (1) IN GENERAL.—Nothing in this title shall be
19 construed as authorizing the withholding of informa-
20 tion from Congress or from the General Accounting
21 Office.

22 (2) AVAILABILITY TO THE CONGRESS—

23 (A) IN GENERAL.—Any information ob-
24 tained at any time under this title or under any
25 predecessor Act regarding the control of ex-

1 ports, including any report or license applica-
2 tion required under this title, shall be made
3 available to any committee or subcommittee of
4 Congress of appropriate jurisdiction upon the
5 request of the chairman or ranking minority
6 member of such committee or subcommittee.

7 (B) PROHIBITION ON FURTHER DISCLO-
8 SURE.—No committee, subcommittee, or Mem-
9 ber of Congress shall disclose any information
10 obtained under this Act or any predecessor Act
11 regarding the control of exports which is sub-
12 mitted on a confidential basis to the Congress
13 under subparagraph (A) unless the full com-
14 mittee to which the information is made avail-
15 able determines that the withholding of the in-
16 formation is contrary to the national interest.

17 (3) AVAILABILITY TO THE GAO.—

18 (A) IN GENERAL.—Notwithstanding sub-
19 section (a), information described in paragraph
20 (2) shall, consistent with the protection of intel-
21 ligence, counterintelligence, and law enforce-
22 ment sources, methods, and activities, as deter-
23 mined by the agency that originally obtained
24 the information, and consistent with the provi-
25 sions of section 716 of title 31, United States

1 Code, be made available only by the agency,
2 upon request, to the Comptroller General of the
3 United States or to any officer or employee of
4 the General Accounting Office authorized by
5 the Comptroller General to have access to such
6 information.

7 (B) PROHIBITION ON FURTHER DISCLO-
8 SURES.—No officer or employee of the General
9 Accounting Office shall disclose, except to Con-
10 gress in accordance with this paragraph, any
11 such information which is submitted on a con-
12 fidential basis and from which any individual
13 can be identified.

14 (c) INFORMATION EXCHANGE.—Notwithstanding
15 subsection (a), the Secretary and the Commissioner of
16 Customs shall exchange licensing and enforcement infor-
17 mation with each other as necessary to facilitate enforce-
18 ment efforts and effective license decisions.

19 (d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL
20 INFORMATION.—

21 (1) DISCLOSURE PROHIBITED.—No officer or
22 employee of the United States, or any department or
23 agency thereof, may publish, divulge, disclose, or
24 make known in any manner or to any extent not au-
25 thorized by law any information that—

1 (A) the officer or employee obtains in the
2 course of his or her employment or official du-
3 ties or by reason of any examination or inves-
4 tigation made by, or report or record made to
5 or filed with, such department or agency, or of-
6 ficer or employee thereof; and

7 (B) is exempt from disclosure under this
8 section.

9 (2) CRIMINAL PENALTIES.—Any such officer or
10 employee who knowingly violates paragraph (1) shall
11 be fined not more than \$50,000, imprisoned not
12 more than 1 year, or both, for each violation of
13 paragraph (1). Any such officer or employee may
14 also be removed from office or employment.

15 (3) CIVIL PENALTIES; ADMINISTRATIVE SANC-
16 TIONS.—The Secretary may impose a civil penalty of
17 not more than \$5,000 for each violation of para-
18 graph (1). Any officer or employee who commits
19 such violation may also be removed from office or
20 employment for the violation of paragraph (1). Sec-
21 tions 503 (e), (g), (h), and (i) and 507 (a), (b), and
22 (c) shall apply to violations described in this para-
23 graph.

1 **TITLE VII—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 701. ANNUAL REPORT.**

4 (a) ANNUAL REPORT.—Not later than February 1 of
5 each year, the Secretary shall submit to Congress a report
6 on the administration of this Act during the fiscal year
7 ending September 30 of the preceding calendar year. All
8 Federal agencies shall cooperate fully with the Secretary
9 in providing information for each such report.

10 (b) REPORT ELEMENTS.—Each such report shall in-
11 clude in detail—

12 (1) a description of the implementation of the
13 export control policies established by this Act, in-
14 cluding any delegations of authority by the President
15 and any other changes in the exercise of delegated
16 authority;

17 (2) a description of the changes to and the
18 year-end status of country tiering and the Control
19 List;

20 (3) a description of the petitions filed and the
21 determinations made with respect to foreign avail-
22 ability and mass-market status, the set-asides of for-
23 eign availability and mass-market status determina-
24 tions, and negotiations to eliminate foreign avail-
25 ability;

1 (4) a description of any enhanced control im-
2 posed on an item pursuant to section 201(d);

3 (5) a description of the regulations issued under
4 this Act;

5 (6) a description of organizational and proce-
6 dural changes undertaken in furtherance of this Act;

7 (7) a description of the enforcement activities,
8 violations, and sanctions imposed under this Act;

9 (8) a statistical summary of all applications and
10 notifications, including—

11 (A) the number of applications and notifi-
12 cations pending review at the beginning of the
13 fiscal year;

14 (B) the number of notifications returned
15 and subject to full license procedure;

16 (C) the number of notifications with no ac-
17 tion required;

18 (D) the number of applications that were
19 approved, denied, or withdrawn, and the num-
20 ber of applications where final action was
21 taken; and

22 (E) the number of applications and notifi-
23 cations pending review at the end of the fiscal
24 year;

- 1 (9) summary of export license data by export
2 identification code and dollar value by country;
- 3 (10) an identification of processing time by—
 - 4 (A) overall average, and
 - 5 (B) top 25 export identification codes;
- 6 (11) an assessment of the effectiveness of mul-
7 tilateral regimes, and a description of negotiations
8 regarding export controls;
- 9 (12) a description of the significant differences
10 between the export control requirements of the
11 United States and those of other multilateral control
12 regime members, and the specific differences be-
13 tween United States requirements and those of other
14 significant supplier countries;
- 15 (13) an assessment of the costs of export con-
16 trols;
- 17 (14) a description of the progress made toward
18 achieving the goals established for the Department
19 dealing with export controls under the Government
20 Performance Results Act; and
- 21 (15) any other reports required by this Act to
22 be submitted to the Committee on Banking, Hous-
23 ing, and Urban Affairs of the Senate and the Com-
24 mittee on International Relations of the House of
25 Representatives.

1 (c) FEDERAL REGISTER PUBLICATION REQUIRE-
2 MENTS.—Whenever information under this Act is required
3 to be published in the Federal Register, such information
4 shall, in addition, be posted on the Department of Com-
5 merce or other appropriate government website.

6 **SEC. 702. ENHANCEMENT OF CONGRESSIONAL OVERSIGHT**
7 **OF NUCLEAR TRANSFERS TO NORTH KOREA.**

8 The North Korea Threat Reduction Act of 1999
9 (subtitle B of title VIII of division A of H.R. 3427, as
10 enacted into law by section 1000(a)(7) of Public Law 106–
11 113, and as contained in appendix G to such Public Law)
12 is amended in section 822(a)—

13 (1) by redesignating paragraphs (1) through
14 (7) as subparagraphs (A) through (G), respectively,
15 and by indenting each such subparagraph 2 ems to
16 the right;

17 (2) by striking “until the President” and insert-
18 ing “until—

19 “(1) the President”;

20 (3) at the end of subparagraph (G) (as redesign-
21 ated in paragraph (1)) by striking the period and
22 inserting “; and

23 “(2) a joint resolution of the two Houses of
24 Congress is enacted into law—

1 “(A) the matter after the resolving clause
2 of which is as follows: ‘That the Congress here-
3 by concurs in the determination and report of
4 the President relating to compliance by North
5 Korea with certain international obligations
6 transmitted pursuant to section 822(a)(1) of
7 the North Korea Threat Reduction Act of
8 1999.’;

9 “(B) which does not have a preamble; and

10 “(C) the title of which is as follows: ‘Joint
11 Resolution relating to compliance by North
12 Korea with certain international obligations
13 pursuant to the North Korea Threat Reduction
14 Act of 1999.’ ”; and

15 (4) by striking “such agreement,” both places
16 it appears and inserting in both places “such agree-
17 ment (or that are controlled under the Export Trig-
18 ger List of the Nuclear Suppliers Group),”.

19 **SEC. 703. PROCEDURES FOR CONSIDERATION OF JOINT**
20 **RESOLUTIONS**

21 The North Korea Threat Reduction Act of 1999 is
22 amended—

23 (1) by redesignating section 823 as section 824;

24 and

1 (2) by inserting after section 822 the following
2 new section:

3 **“SEC. 823. PROCEDURES FOR CONSIDERATION OF JOINT**
4 **RESOLUTION DESCRIBED IN SECTION**
5 **822(a)(2).**

6 “(a) RULEMAKING.—The provisions of this section
7 are enacted by the Congress—

8 “(1) as an exercise of the rulemaking power of
9 the House of Representatives and the Senate, re-
10 spectively, and, as such, shall be considered as part
11 of the rules of either House and shall supersede
12 other rules only to the extent they are inconsistent
13 therewith; and

14 “(2) with full recognition of the constitutional
15 right of either House to change the rules so far as
16 they relate to the procedures of that House at any
17 time, in the same manner, and to the same extent
18 as in the case of any other rule of that House.

19 “(b) INTRODUCTION AND REFERRAL.—

20 “(1) INTRODUCTION.—A joint resolution de-
21 scribed in section 822(a)(2)—

22 “(A) shall be introduced in the House of
23 Representatives by the majority leader or mi-
24 nority leader or by a Member of the House of

1 Representatives designated by the majority
2 leader or minority leader; and

3 “(B) shall be introduced in the Senate by
4 the majority leader or minority leader or a
5 Member of the Senate designated by the major-
6 ity leader or minority leader.

7 “(2) REFERRAL.—The joint resolution shall be
8 referred to the Committee on International Relations
9 of the House of Representatives and the Committee
10 on Foreign Relations of the Senate.

11 “(c) DISCHARGE OF COMMITTEES.—If a committee
12 to which a joint resolution described in section 822(a)(2)
13 is referred has not reported such joint resolution by the
14 end of 30 days beginning on the date of its introduction,
15 such committee shall be discharged from further consider-
16 ation of such joint resolution, and such joint resolution
17 shall be placed on the appropriate calendar of the House
18 involved.

19 “(d) FLOOR CONSIDERATION IN THE HOUSE OF
20 REPRESENTATIVES.—

21 “(1) IN GENERAL.—On or after the third cal-
22 endar day (excluding Saturdays, Sundays, or legal
23 holidays, except when the House of Representatives
24 is in session on such a day) after the date on which
25 the committee to which a joint resolution described

1 in section 822(a)(2) is referred has reported, or has
2 been discharged from further consideration of, such
3 a joint resolution, it shall be in order for any Mem-
4 ber of the House to move to proceed to the consider-
5 ation of the joint resolution. A Member of the House
6 may make the motion only on the day after the cal-
7 endar day on which the Member announces to the
8 House the Member's intention to do so. Such motion
9 is privileged and is not debatable. The motion is not
10 subject to amendment or to a motion to postpone.
11 A motion to reconsider the vote by which the motion
12 is agreed to shall not be in order. If a motion to pro-
13 ceed to the consideration of the joint resolution is
14 agreed to, the House shall immediately proceed to
15 consideration of the joint resolution which shall re-
16 main the unfinished business until disposed of.

17 “(2) DEBATE.—Debate on a joint resolution de-
18 scribed in section 822(a)(2), and on all debatable
19 motions and appeals in connection therewith, shall
20 be limited to not more than two hours, which shall
21 be divided equally between those favoring and those
22 opposing the joint resolution. An amendment to the
23 joint resolution is not in order. A motion further to
24 limit debate is in order and is not debatable. A mo-
25 tion to table, a motion to postpone, or a motion to

1 recommit the joint resolution is not in order. A mo-
2 tion to reconsider the vote by which the joint resolu-
3 tion is agreed to or disagreed to is not in order.

4 “(3) APPEALS.—Appeals from the decisions of
5 the Chair to the procedure relating to a joint resolu-
6 tion described in section 822(a)(2) shall be decided
7 without debate.

8 “(e) FLOOR CONSIDERATION IN THE SENATE.—Any
9 joint resolution described in section 822(a)(2) shall be
10 considered in the Senate in accordance with the provisions
11 of section 601(b)(4) of the International Security Assist-
12 ance and Arms Export Control Act of 1976.

13 “(f) CONSIDERATION BY THE OTHER HOUSE.—If,
14 before the passage by one House of a joint resolution of
15 that House described in section 822(a)(2), that House re-
16 ceives from the other House a joint resolution described
17 in section 822(a)(2), then the following procedures shall
18 apply:

19 “(1) The joint resolution of the other House
20 shall not be referred to a committee and may not be
21 considered in the House receiving it except in the
22 case of final passage as provided in paragraph
23 (2)(B).

1 “(2) With respect to a joint resolution described
2 in section 822(a)(2) of the House receiving the joint
3 resolution—

4 “(A) the procedure in that House shall be
5 the same as if no joint resolution had been re-
6 ceived from the other House; but

7 “(B) the vote on final passage shall be on
8 the joint resolution of the other House.

9 “(3) Upon disposition of the joint resolution re-
10 ceived from the other House, it shall no longer be
11 in order to consider the joint resolution that origi-
12 nated in the receiving House.

13 “(g) COMPUTATION OF DAYS.—In the computation
14 of the period of 30 days referred to in subsection (c), there
15 shall be excluded the days on which either House of Con-
16 gress is not in session because of an adjournment of more
17 than 3 days to a day certain or because of an adjournment
18 of the Congress sine die.”.

19 **SEC. 704. TECHNICAL AND CONFORMING AMENDMENTS.**

20 (a) REPEAL.—The Export Administration Act of
21 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

22 (b) ENERGY POLICY AND CONSERVATION ACT.—

23 (1) Section 103 of the Energy Policy and Con-
24 servation Act (42 U.S.C. 6212) is repealed.

1 (2) Section 251(d) of the Energy Policy and
2 Conservation Act (42 U.S.C. 6271(d)) is repealed.

3 (c) ALASKA NATURAL GAS TRANSPORTATION ACT.—
4 Section 12 of the Alaska Natural Gas Transportation Act
5 of 1976 (15 U.S.C. 719j) is repealed.

6 (d) MINERAL LEASING ACT.—Section 28(u) of the
7 Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

8 (e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Sec-
9 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))
10 is repealed.

11 (f) DISPOSITION OF CERTAIN NAVAL PETROLEUM
12 RESERVE PRODUCTS.—Section 7430(e) of title 10, United
13 States Code, is repealed.

14 (g) OUTER CONTINENTAL SHELF LANDS ACT.—Sec-
15 tion 28 of the Outer Continental Shelf Lands Act (43
16 U.S.C. 1354) is repealed.

17 (h) ARMS EXPORT CONTROL ACT.—

18 (1) Section 38 of the Arms Export Control Act
19 (22 U.S.C. 2778) is amended—

20 (A) in subsection (e)—

21 (i) in the first sentence, by striking
22 “subsections (c)” and all that follows
23 through “12 of such Act,” and inserting
24 “subsections (b), (c), (d) and (e) of section
25 503 of the Export Administration Act of

1 2001, by subsections (a) and (b) of section
2 506 of such Act, and by section 602 of
3 such Act,”; and

4 (ii) in the third sentence, by striking
5 “11(c) of the Export Administration Act of
6 1979” and inserting “503(c) of the Export
7 Administration Act of 2001”; and

8 (B) in subsection (g)(1)(A)(ii), by inserting
9 “or section 503 of the Export Administration
10 Act of 2001” after “1979”.

11 (2) Section 39A(c) of the Arms Export Control
12 Act (22 U.S.C. 2779a(c)) is amended—

13 (A) by striking “subsections (c),” and all
14 that follows through “12(a) of such Act” and
15 inserting “subsections (c), (d), and (e) of sec-
16 tion 503, section 507(c), and subsections (a)
17 and (b) of section 506, of the Export Adminis-
18 tration Act of 2001”; and

19 (B) by striking “11(c)” and inserting
20 “503(c)”.

21 (3) Section 40(k) of the Arms Export Control
22 Act (22 U.S.C. 2780(k)) is amended—

23 (A) by striking “11(c), 11(e), 11(g), and
24 12(a) of the Export Administration Act of
25 1979” and inserting “503(b), 503(c), 503(e),

1 506(a), and 506(b) of the Export Administra-
2 tion Act of 2001”; and

3 (B) by striking “11(c)” and inserting
4 “503(c)”.

5 (i) OTHER PROVISIONS OF LAW.—

6 (1) Section 5(b)(4) of the Trading with the
7 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by
8 striking “section 5 of the Export Administration Act
9 of 1979, or under section 6 of that Act to the extent
10 that such controls promote the nonproliferation or
11 antiterrorism policies of the United States” and in-
12 serting “titles II and III of the Export Administra-
13 tion Act of 2001”.

14 (2) Section 502B(a)(2) of the Foreign Assist-
15 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
16 ed in the second sentence—

17 (A) by striking “Export Administration
18 Act of 1979” the first place it appears and in-
19 serting “Export Administration Act of 2001”;
20 and

21 (B) by striking “Act of 1979)” and insert-
22 ing “Act of 2001)”.

23 (3) Section 140(a) of the Foreign Relations Au-
24 thorization Act, Fiscal Years 1988 and 1989 (22
25 U.S.C. 2656f(a)) is amended—

1 (A) in paragraph (1)(B), by inserting “or
2 section 310 of the Export Administration Act of
3 2001” after “Act of 1979”; and

4 (B) in paragraph (2), by inserting “or 310
5 of the Export Administration Act of 2001”
6 after “6(j) of the Export Administration Act of
7 1979”.

8 (4) Section 40(e)(1) of the State Department
9 Basic Authorities Act of 1956 (22 U.S.C.
10 2712(e)(1)) is amended by striking “section 6(j)(1)
11 of the Export Administration Act of 1979” and in-
12 serting “section 310 of the Export Administration
13 Act of 2001”.

14 (5) Section 205(d)(4)(B) of the State Depart-
15 ment Basic Authorities Act of 1956 (22 U.S.C.
16 305(d)(4)(B)) is amended by striking “section 6(j)
17 of the Export Administration Act of 1979” and in-
18 serting “section 310 of the Export Administration
19 Act of 2001”.

20 (6) Section 110 of the International Security
21 and Development Cooperation Act of 1980 (22
22 U.S.C. 2778a) is amended by striking “Act of
23 1979” and inserting “Act of 2001”.

24 (7) Section 203(b)(3) of the International
25 Emergency Economic Powers Act (50 U.S.C.

1 1702(b)(3)) is amended by striking “section 5 of the
2 Export Administration Act of 1979, or under section
3 6 of such Act to the extent that such controls pro-
4 mote the nonproliferation or antiterrorism policies of
5 the United States” and inserting “the Export Ad-
6 ministration Act of 2001”.

7 (8) Section 1605(a)(7)(A) of title 28, United
8 States Code, is amended by striking “section 6(j) of
9 the Export Administration Act of 1979 (50 U.S.C.
10 App. 2405(j))” and inserting “section 310 of the
11 Export Administration Act of 2001”.

12 (9) Section 2332d(a) of title 18, United States
13 Code, is amended by striking “section 6(j) of the
14 Export Administration Act of 1979 (50 U.S.C. App.
15 2405)” and inserting “section 310 of the Export Ad-
16 ministration Act of 2001”.

17 (10) Section 620H(a)(1) of the Foreign Assist-
18 ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-
19 ed by striking “section 6(j) of the Export Adminis-
20 tration Act of 1979 (50 U.S.C. App. 2405(j))” and
21 inserting “section 310 of the Export Administration
22 Act of 2001”.

23 (11) Section 1621(a) of the International Fi-
24 nancial Institutions Act (22 U.S.C. 262p-4q(a)) is
25 amended by striking “section 6(j) of the Export Ad-

1 ministration Act of 1979 (50 U.S.C. App. 2405(j))”
2 and inserting “section 310 of the Export Adminis-
3 tration Act of 2001”.

4 (12) Section 1956(e)(7)(D) of title 18, United
5 States Code, is amended by striking “section 11 (re-
6 lating to violations) of the Export Administration of
7 1979” and inserting “section 503 (relating to pen-
8 alties) of the Export Administration Act of 2001”.

9 (13) Subsection (f) of section 491 and section
10 499 of the Forest Resources Conservation and
11 Shortage Relief Act of 1990 (16 U.S.C. 620e(f) and
12 620j) are repealed.

13 (14) Section 904(2)(B) of the Trade Sanctions
14 Reform and Export Enhancement Act of 2000 is
15 amended by striking “Export Administration Act of
16 1979” and inserting “Export Administration Act of
17 2001”.

18 (15) Section 983(i)(2) of title 18, United States
19 Code (as added by Public Law 106–185), is
20 amended—

21 (A) by striking the “or” at the end of sub-
22 paragraph (D);

23 (B) by striking the period at the end of
24 subparagraph (E) and inserting “; or”; and

1 (C) by inserting the following new subpara-
2 graph:

3 “(F) the Export Administration Act of
4 2001.”.

5 (j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding
6 any other provision of law, any product that—

7 (1) is standard equipment, certified by the Fed-
8 eral Aviation Administration, in civil aircraft, and

9 (2) is an integral part of such aircraft, shall be
10 subject to export control only under this Act. Such
11 product shall not be subject to controls under sec-
12 tion 38(b)(2) of the Arms Export Control Act (22
13 U.S.C. 2778(b)).

14 (k) REPEAL OF CERTAIN EXPORT CONTROLS.—Sub-
15 title B of title XII of division A of the National Defense
16 Authorization Act for Fiscal Year 1998 (50 U.S.C. App.
17 2404 note) is repealed.

18 **SEC. 705. SAVINGS PROVISIONS.**

19 (a) IN GENERAL.—All delegations, rules, regulations,
20 orders, determinations, licenses, or other forms of admin-
21 istrative action which have been made, issued, conducted,
22 or allowed to become effective under—

23 (1) the Export Control Act of 1949, the Export
24 Administration Act of 1969, the Export Administra-
25 tion Act of 1979, or the International Emergency

1 Economic Powers Act when invoked to maintain and
2 continue the Export Administration regulations, or

3 (2) those provisions of the Arms Export Control
4 Act which are amended by section 702,

5 and are in effect on the date of enactment of this Act,
6 shall continue in effect according to their terms until
7 modified, superseded, set aside, or revoked under this Act
8 or the Arms Export Control Act.

9 (b) ADMINISTRATIVE AND JUDICIAL PRO-
10 CEEDINGS.—

11 (1) EXPORT ADMINISTRATION ACT.—This Act
12 shall not affect any administrative or judicial pro-
13 ceedings commenced or any application for a license
14 made, under the Export Administration Act of 1979
15 or pursuant to Executive Order 12924, which is
16 pending at the time this Act takes effect. Any such
17 proceedings, and any action on such application,
18 shall continue under the Export Administration Act
19 of 1979 as if that Act had not been repealed.

20 (2) OTHER PROVISIONS OF LAW.—This Act
21 shall not affect any administrative or judicial pro-
22 ceeding commenced or any application for a license
23 made, under those provisions of the Arms Export
24 Control Act which are amended by section 702, if
25 such proceeding or application is pending at the time

1 this Act takes effect. Any such proceeding, and any
2 action on such application, shall continue under
3 those provisions as if those provisions had not been
4 amended by section 702.

5 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
6 Any determination with respect to the government of a
7 foreign country under section 6(j) of the Export Adminis-
8 tration Act of 1979, or Executive Order 12924, that is
9 in effect on the day before the date of enactment of this
10 Act, shall, for purposes of this title or any other provision
11 of law, be deemed to be made under section 310 of this
12 Act until superseded by a determination under such sec-
13 tion 310.

14 (d) LAWFUL INTELLIGENCE ACTIVITIES.—The pro-
15 hibitions otherwise applicable under this Act do not apply
16 with respect to any transaction subject to the reporting
17 requirements of title V of the National Security Act of
18 1947. Notwithstanding any other provision of this Act,
19 nothing shall affect the responsibilities and authorities of
20 the Director of Central Intelligence under section 103 of
21 the National Security Act of 1947.

22 (e) IMPLEMENTATION.—The Secretary shall make
23 any revisions to the Export Administration regulations re-

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1 quired by this Act no later than 180 days after the date
2 of enactment of this Act.

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Chairman HYDE. The Chair would like to clearly indicate he intends to follow regular order and recognize Members to offer and debate amendments and, when desired, to yield to other Members. Members will not be recognized for the purpose of yielding to anyone other than a Member. This is a markup, not a hearing, and therefore the Committee will not be receiving testimony, but engaging in debate.

The comprehensive reform legislation before us this morning revises and amends the Export Administration Act, which expired in 1994 but was reauthorized for a 1-year period through August 21 of this year.

My colleagues will recall this Committee reported out a 3-month stop-gap extender through November 20, a measure which cleared the House on July 30 and is now awaiting Senate action.

The bill before us this morning is identical to S. 149, which the Administration supports with one exception. It includes two sections amending the North Korean Threat Reduction Act of 1999, which passed the House by a vote of 374 to six.

These provisions are intended to ensure that Congress will be fully involved in the decision our nation may have to make in several years to either approve or delay the transfer to North Korea of key components for the two light-water reactors that are being built in North Korea pursuant to the 1994 Agreed Framework with that country.

While I strongly support these North Korea provisions, I do have substantive concerns with H.R. 2581 and, together with the Ranking Member, Mr. Lantos, we will offer a series of amendments which will address many of my concerns relating to the role of our Secretaries of State and Defense in the export licensing and list making process and the overly permissive standards currently in the bill governing the export of sensitive products and technologies.

This is an important bill, as important as any bill this Committee will consider this year. Through this legislation the Congress delegates to the executive branch its expressed constitutional authority to regulate foreign commerce to control exports for national security and foreign policy purposes.

While I do not support H.R. 2581 in its current form, I do believe it is important that the Committee discharge its responsibilities for consideration of this legislation, primarily in order that our export controls should have a firm statutory basis. That is why we are marking up this measure today and why I have agreed to use H.R. 2581 as the base text.

There are more than 35 amendments which have been filed thus far, so I would ask for your patience, your persistence, your cooperation and continued attendance as we continue them. I am pleased to yield to the Ranking Minority Member, Mr. Lantos.

[The prepared statement of Chairman Hyde follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

H.R. 2581

The Committee will move to the consideration of the the Export Administration Act of 2001, H . R. 2581, a measure introduced by Mr. Gilman.

The Chair would like to clearly indicate that he intends to follow regular order and recognize Members to offer and debate amendments, and when desired to yield to other Members. Members will not be recognized for the purpose of yielding to anyone other than another Member. This is a mark up and not a hearing and, therefore, the committee will not be receiving testimony, but engaging in debate.

The comprehensive reform legislation before us this morning revises and amends the Export Administration Act, the EAA, which expired in 1994 but was reauthorized for a one-year period through August 21 of this year.

My colleagues will recall that this Committee reported out a three month stop-gap extender through November 20, a measure which cleared the House on July 30 and is now awaiting Senate action.

The bill before us is identical to S. 149, which the Administration supports with one exception. It includes two sections amending the North Korean Threat Reduction Act of 1999, which passed the House by a vote of 374 to six.

These provisions are intended to ensure that Congress will be fully involved in the decision our nation may have to make in several years to either approve or delay the transfer to North Korea of key components for the two light-water reactors that are being built in North Korea pursuant to the 1994 Agreed Framework with that country.

While I strongly support these North Korea provisions, I do have substantive concerns with H.R. 2581 and, together with the Ranking Member Mr. Lantos, I will offer a series of amendments which will address many of my concerns relating to the role of our Secretaries of State and Defense in the export licensing and list making process and the overly permissive standards currently in the bill governing the export of sensitive products and technologies.

I do believe, however, it is important to move this legislation forward in a timely fashion and that our export controls should have a firm statutory basis. That is why we are marking up this measure today and why I have agreed to use this measure as the base text.

There are more than 35 amendments which have been filed thus far, and I would ask for your patience, cooperation and continued attendance as we consider them.

Mr. LANTOS. Thank you very much, Mr. Chairman.

First, I would like to commend you for scheduling today's markup of the Export Administration Act.

Mr. Chairman, you have worked tirelessly on a bipartisan basis to improve the legislation before our Committee today, and I hope that by the end of today's markup we will have a bill that we can all support enthusiastically.

I am very pleased to state for the record that bipartisanship is alive and well in the House International Relations Committee, and I recommend the procedure to many of our colleagues on some other Committees.

If the United States is going to work effectively with our friends and allies to stop dual technology from getting into the wrong hands, we must have a predictable, reasonable export control framework here at home. American efforts to toughen multilateral controls have repeatedly been undermined by our failure to reauthorize the Export Administration Act.

We are here today, Mr. Chairman, to begin the process of crafting a new American system to control sensitive dual use exports. As we vote on a series of amendments today, we will be weighing the proper balance between promoting American exports and the need to protect our national security.

I believe, Mr. Chairman, we can do both and, as you indicated, I look forward to a package of joint Hyde-Lantos amendments to accomplish that goal. These amendments make some modest changes in the bill to ensure that the President of the United States will have the flexibility and the authority to control exports for important national security reasons.

These amendments, Mr. Chairman, also ensure that items which could contribute to the development of weapons of mass destruction do not go to foreign entities that are involved in such programs. Our amendments also establish that items should not be exported if they would undermine regional stability or the security of NATO or our major non-NATO allies.

These amendments also ensure that, if necessary, the Secretary of State and the Secretary of Defense will be able to express effectively their objections to items being removed from the national security control list.

At the appropriate time in today's markup, Mr. Chairman, I plan to offer a series of three amendments to further improve the legislation.

The first amendment will prohibit the export of torture equipment. The second amendment would give the Administration the authority to ban the export of pesticides which are banned for use in the United States. The third amendment will prohibit human experimentation by U.S. drug manufacturers overseas unless the FDA has approved such human testing here in the United States for a particular drug.

I urge my colleagues to support all these amendments to ensure that we pass an improved bill, and I thank you for the time.

Chairman HYDE. Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

I am pleased to have sponsored this measure. H.R. 2581 provides authority for the control of exports. We must remain vigilant about the export of high technology products. Dual use products which have been both commercial and military in application can be put to dangerous use by countries that are seeking to implement their military aggression. Products that can be used to make fertilizers can be used as part of a chemical or biological weapons program. Certain imaging equipment that can be used in hospitals can be used for nuclear weapons programs. Saddam Hussein and others have shown themselves to be masters of manipulation when it comes to dual use items.

At the same time, it is extremely important that we put in place a reasonable system of export controls that does not impede the legitimate needs of our commercial sector as we seek to safeguard our national security.

At a minimum, the review process should be carried out as expeditiously as possible. That has not been the case in the past. Nonetheless, we must err on the side of caution when it comes to export controls.

In addition to a strong national export control system, the highest of priorities should be placed on obtaining an international consensus in favor of strong export control regimes. A strong U.S. export control regime can only do so much if other nations are exporting the same products and services that our nation has foregone.

The Senate version of this bill, S. 149, has been reported favorably out of Committee by the Senate and is still awaiting floor consideration.

I commend Chairman Hyde for taking a strong leadership role on this issue. He has taken on a challenging issue and has kept in mind our overarching goal of promoting our national interests.

Thank you for yielding, Mr. Chairman.

Chairman HYDE. Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to commend you and the Ranking Member for the way you have handled this issue procedurally, even if we differ over policy.

Since 1999, this Committee has held five hearings on the EAA and the Senate has held nine hearings in the Banking Committee alone, so clearly some efficient deliberation has occurred and the time to act is now. However, I believe that the amendments to be offered are neither minor nor technical and, if adopted, they will ultimately ensure that there will be no Export Administration Act.

We come to this debate with two different generational views, one rooted in the Cold War era and the other recognizing the global realities of the 21st century. As I have stated before, I believe the bill reported by the Senate Banking Committee, S. 149, protects Americans by controlling exports while promoting America's economic prosperity by updating the export control process, and that is why 2 weeks ago I introduced the Senate bill as H.R. 2557, along with Messrs. Houghton, Flake and Blumenauer of the Committee.

In a letter from March of this year to then-Chairman Phil Gramm of the Senate Banking Committee, Condoleezza Rice, the President's National Security Advisor, who is known for her conservative views on national security, said the following, and I quote,

"The Administration has carefully reviewed the current version of S. 149, the Export Administration Act of 2001, which provides authority for controlling exports of dual use goods and technologies. As a result of its review, the Administration has proposed a number of changes. The Secretary of State, Secretary of Defense, Secretary of Commerce and I agree that these changes will strengthen the President's national security and foreign policy authorities to control dual use exports in a balanced manner which will permit U.S. companies to compete more effectively in the global marketplace. With these changes, S. 149 represents a positive step toward the reform of the U.S. export control systems supported by the President. If the Committee incorporates these changes into S. 149, the Administration will support the bill."

Mr. Chairman, every single one of those changes were incorporated and the Administration does indeed support the Senate bill.

Secretaries Powell, Rumsfeld, and Evans agree and many of our nation's top national security experts agree with its approach. The President also has publicly urged Congress to enact this important legislation.

This legislation is important not only to America's competitiveness but also to our continued military dominance. Dr. Donald Hicks, former Reagan Under Secretary of Defense for Research and Engineering and Chairman of the Defense Science Board Task Force on Globalization and Security, pointed out in testimony this year that unlike during the Cold War, the Department of Defense today relies on the private sector to maintain its military edge.

He went on to state that

“If high tech’s exports are restricted in any significant manner, it could well have a stifling effect on the U.S. military’s rate of advancement.”

I don’t believe that anyone on this Committee wants that end result.

In 1999, the Cox Committee made several key recommendations on export controls. First and foremost, the Committee recommended reauthorizing the Export Administration Act. It also made suggestions relating to export licensing, multilateral negotiations, criminal and civil penalties and sanctions for multilateral regime violations. Titles 2, 4 and 5 of S. 149 incorporate these recommendations as well.

Also in 1999, the Weapons of Mass Destruction Commission made its recommendation regarding export controls. Again, the commission’s top recommendation was reauthorization of the Export Administration Act. The commission also made recommendations regarding national security export controls, export licensing procedures and multilateral efforts. Those recommendations were incorporated into titles 2, 4 and 5 of S. 149.

Perhaps most importantly, the bill would provide the President with unprecedented authority to impose controls for reasons of national security, terrorism, proliferation or international obligations, notwithstanding an export’s foreign availability or mass market status. The enhanced control and set-aside authorities in title 2, along with the terrorism and international obligation authorities in title 3, give the President the power and flexibility that he needs to protect U.S. interests in today’s rapidly changing world.

So, Mr. Chairman, let me say to my colleagues if you favor sensibly updating a severely outmoded export control process, if you favor giving the President all the authority and flexibility he needs to control sensitive dual use exports but also facilitating the process for our exporters, if you favor punishing violators in a meaningful way, both in criminal and civil court, if you favor maintaining the United States’ military technological edge throughout the world, if you favor all of these concepts and you want to protect Americans and boost the economy, you should support our bill as introduced, which I will offer as a substitute at the end of the markup process and oppose any weakening amendments.

Thank you, Mr. Chairman.

Mr. LANTOS. Will you yield for a minute, Mr. Menendez?

Mr. MENENDEZ. I would be happy to yield, Mr. Lantos.

Mr. LANTOS. I want to thank my good friend for yielding and want to commend him for a well thought out, well reasoned and powerful statement.

I would merely like to make a couple of observations.

Chairman Hyde and I, and I do not presume to speak for him, but in this case I think he will not object, Chairman Hyde and I are not interested in killing the Export Administration Act. Our purpose is to improve the Export Administration Act.

Secondly, with respect to your generational comment, let me suggest with all due respect that fresh thinking is not a generational issue. I was noticing with great interest when President Bush vis-

ited our troops in Kosovo the other day he made the very appropriate statement that we came in together with our European allies and we will leave together.

That was not his position during the campaign, while some of us of an older generation than the President have maintained throughout that since we went in together we as NATO allies should come out together. And I hope that my friend from New Jersey will also see the wisdom of the amendments that Chairman Hyde and I will propose as time moves on.

I also think it is important to realize that while during the Cold War the Export Administration Act issue was a relatively simple one and there was total unanimity in the Congress as to what we do because the Soviet Union was such an overwhelming threat, Export Administration Act crafting becomes more complex as the international atmosphere became more complex. Just because the Soviet Union collapsed, it does not mean that threats to U.S. national security have collapsed.

From North Korea to Iran, to Iraq, to lots of other places, there are severe threats, and we need to craft a more sophisticated, more complex bill which is responsive to the threats today.

I want to thank my friend for yielding.

Chairman HYDE. The gentleman from Texas, Mr. Paul.

Mr. PAUL. Thank you, Mr. Chairman.

Mr. Chairman, while I remain committed to a constitutionally limited government, I do believe that there is both authority and reason to maintain certain export restrictions. As I have written, the reason that the Congress is given authority to declare war, levy taxes and regulate commerce all in the same section of our Constitution can be understood if one realizes that the founding fathers recognized the close relationship between these specific policy activities.

My problem, however, with the Export Administration Act is that it undertakes what is a proper Federal function in the most inappropriate ways. From authorizing and hiring more Federal agents to work abroad and to conduct investigations which could curtail civil liberties to overriding state laws and temporarily suspending rights without due process, this bill would authorize activities with which I am greatly concerned. Moreover, the bill grants far too much latitude to the executive branch to write administrative law and to waiver provisions of the legislation.

Congress should jealously guard its prerogatives, rather than carelessly surrendering them to the President and Administration officials. It is exactly this type of surrender that sets the stage for the types of scandals we have had relative to technology transfers in recent years and encourages corporate influence in this area.

The mere fact that there has been a change in Administration should not persuade us to write bad laws. Legislation outlasts Administrations. As such, we ought to realize that it is particularly important to instill procedural safeguards when wise and honest men are in office.

When we surrender these safeguards, we will have no line of defense when less scrupulous individuals once again gain power. History tells us that we can never put complete trust in future leaders to be more diligent than we ourselves are prepared to be.

Mr. Chairman, for all these reasons, I plan to vote against this bill. Thank you very much.

Chairman HYDE. The gentleman from California, Mr. Sherman. Mr. SHERMAN. Thank you, Mr. Chairman.

I think this bill is an important step forward, first, in that it provides for greater speed in dealing with decisions. There are reasons to allow an export, there are reasons to prohibit an export, but there is never a reason to have undue delay in making that decision.

Second, the bill eliminates the MTOPS standard or at least does not require the Administration to use the MTOPS standard in determining which computer hardware should be exported. This should not be interpreted as a requirement that the Administration ignore or automatically allow the export of super computers even to the most rogue states. This bill simply gives the Administration more discretion in determining what computers get exported, and there is language that somehow we are going to control the export of software so we do not have to worry about hardware.

Keep in mind the software is the easiest thing to smuggle out of this country, that software is easier for rogue states to develop than hardware, and that even though there have been tremendous technical advances and that which was restricted 15 years ago is in a computer store on the street today, does not mean that super computers should be exported to rogue states.

Finally, the distinguished Ranking Member brought up the issue of our togetherness with the Europeans when it comes to going into Kosovo, and when it comes to coming out of Kosovo. Togetherness must mean more than working together with the Europeans when they want us to. Togetherness must mean that Europe join with the United States in preventing dangerous regimes from getting technology. It is time for this Committee to take the lead in tying our efforts on behalf of Europe in Kosovo and in other places to European behavior that affects our military and national security in other parts of the world.

We cannot defend Europe for the Europeans while they make it impossible for us to achieve our objectives on other continents. Certainly preventing rogue regimes, particularly North Korea and Iran, from obtaining technology is at the top of our list when it comes to our own national security.

I yield back.

Chairman HYDE. Mr. Blumenauer.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

First, I would identify with the comments that have been offered by my colleague, Mr. Menendez. I would offer a slightly different perspective. I hope that this hearing today and the attention that you, Mr. Chairman, and our Ranking Member, Mr. Lantos, have helped focus on this important area is a step toward our marking the evolution of our thinking and our technique in dealing with these threats.

I must confess that the more I look at this information, as I listen to people, as I think about the consequences, I am agnostic at best about how effective the current regulations have been in terms of protecting American national security.

Indeed, I think there is evidence that is coming forward that it can in fact have the opposite effect, encouraging other countries to build their own capacity, having less engagement with Americans and, indeed, I fear that it has the potential of undercutting our own ability to generate the development of new technology in the future.

I fear that if we are not careful we will have the danger of having the best of both worlds, where we are burdened down with a cumbersome, expensive process that is of little effect and that helps our business competitors and, frankly, foreign countries that have less sympathy with our objectives. It lulls us into a false sense of complacency while it wastes time and energy that could be better directed toward approaches to the protection of our national security that would be more effective.

I appreciate what I think Mr. Menendez said in terms of the generational aspect. It is not chronology at all, but in terms of the rapid advancement of new generations of technology. I think all of us are befuddled, regardless of our perception, for instance, on the Microsoft case, just what sort of a remedy is there, and by the time the cumbersome mechanisms of government are intervening, technology and events march past us.

Well, I think that is likely to be the case as we are dealing with the technological aspects that we are talking about here today. I am, I guess, as frustrated as any older American as I watch the 23-year-old whiz kids in my office explain to me how to use the equipment on my desk, but I fear that we are thinking in terms that is more suited, perhaps, to some of us of a different technological generation, whatever our chronological age might be, and I hope that this legislation and our discussion of it is a move toward cleaner, simpler legislation and that we can embrace a new generation of protections that are more in tune with things that will be effective at home and abroad.

I look forward to the discussion today, but I hope we can think in terms of where we want to end up in 10 years rather than something that is going to be frozen and actually be a handicap for us. I appreciate your courtesy.

Chairman HYDE. I thank the gentleman.

Are there any other opening statements?

Mr. Smith?

I would remind Mr. Smith, if I may, in the context of generational responses to technological development that one of my heroines, Queen Victoria, once objected to the development of the submarine. She thought it was a very un-British way to fight.

Mr. SMITH OF MICHIGAN. Mr. Chairman, I certainly also would object to some of the younger Members of this Committee suggesting that you and I are not among the young generation.

Let me just say as Chairman of the Subcommittee on Research on the Science Committee, we require the publishing of all of the basic research that we do where there are government funds involved, and so to pretend that we are withholding some of this information gives us maybe a false sense of security. It also ignores the rapid spread of knowledge of information technology that has evolved and is going to move ahead much more rapidly in terms

of the technology that is available to any parts of the world that have a computer and the ability to get on the Internet.

I would also suggest that Congress is relinquishing some of its authority under the Constitution as we allow the Administration to make the determinations that our forefathers who wrote our Constitution thought that the United States Congress should make. So as long as the Administration under auspices of national security continues to decide what should be limited and what should be unlimited, Congress is not taking the kind of responsibility that it should. So, personally, I am also against allowing the Administration to extend this act, even though Congress does not act.

And I will yield back.

Chairman HYDE. Ms. Napolitano?

Ms. NAPOLITANO. Thank you, Mr. Chairman.

The Export Administration Act is of very vital interest to my constituents in California and certainly to the rest of the nation, California being the premier exporting state in the nation and, of course, home of the high tech industry and countless small businesses that do international trade and new entrepreneurs that are consistently coming up with new and innovative ideas.

They do understand full well that their prosperity and our nation's prosperity will depend in great measure on their ability to trade globally. Without this international trade, we would not be in the enviable position we find ourselves in.

Our job, of course, is to ensure they continue to compete favorably in the international marketplace and to strike the appropriate balance in this legislation between our economic interests and our security interests.

I do believe we can deal effectively with both issues. Of course, my main concern as I review the various proposed amendments, worthy as they are, is what impact they may have on our final objective, and that is crafting a new and urgently needed Export Administration Act that is responsive to a technology driven marketplace and the realities of a politically unstable and often volatile world.

If we continue to add various issues to the basic test, we risk making passage of the Export Administration Act less likely, harming our working families, our businesses, our communities and ultimately giving our global competitors a very decisive edge.

I thank you, Mr. Chairman, and yield back the balance of my time.

Chairman HYDE. Mr. Flake, the gentleman from Arizona?

Mr. FLAKE. Thank you, Mr. Chairman.

The bill before us today does not just extend the current existing export control regime, it improves it and I think that we need to think about any amendments that we make to it very carefully.

This is a product, as Senator Enzi said, that virtually everyone who is remotely interested in dual use export controls, the President, the National Security Advisor, Secretaries of State, Defense and Commerce, support the bill that was passed out of the Senate Banking Committee. I think any changes that we make should be weighed heavily and made sparingly.

Despite strong endorsements to the bill by the President and national security experts, we are attempting wholesale changes to the

bill in the form of amendments, some of which are being presented as technical in nature. The majority of these amendments, we need to point out, are far from technical. Some go as far as to alter the very definition of export. In some instances, they allow guesswork and subjectivity and gridlock to our export licensing system and they significantly alter the purposes for which we control exports in this country.

I urge my colleagues to carefully review these amendments one by one before we make changes to this bill.

Finally, I want to mention that there are many who claim that this bill is the darling of industry lobbyists. The fact is this bill is far tougher on industry than the current law is. It establishes new criminal law and civil penalties for export control violations, and these go significantly farther than the slap on the wrist the current violators face.

I just want us all to focus very carefully on these amendments one by one and make sure that we are not undoing the careful negotiations that have been going on for a couple of years.

And with that I yield back.

Chairman HYDE. If there are no further opening statements—

Mr. MENENDEZ. Mr. Chairman, I have a parliamentary inquiry.

Mr. Chairman? On your left here.

Chairman HYDE. Mr. Menendez. Yes?

Mr. MENENDEZ. Mr. Chairman, I heard you in your opening statement describe what regular order will be and I want to make sure I understand what you described as regular order.

Am I to understand that unlike the history of the Committee for the 9 years I have served on it that under my time I cannot ask the Administration to state its views on an amendment?

Chairman HYDE. That is correct.

Mr. MENENDEZ. Is that to be the regular order of the Committee in all markups or is it only in this markup?

Chairman HYDE. We will take them one at a time.

Mr. MENENDEZ. So I assume that answer means in this markup that is going to be—

Chairman HYDE. At least in this markup, right. And we will consider it in others, but I want this to be a markup, not a hearing and I do not think it is helpful to expedition to be having testimony from the audience.

Mr. MENENDEZ. Mr. Chairman, I just want to raise for all of our colleagues and certainly on my behalf my concern that this has not been the history of the Committee and the reason—

Chairman HYDE. It is a new generation, Mr. Menendez.

Mr. MENENDEZ. Well, we have another generational difference, Mr. Chairman.

Chairman HYDE. Moving right ahead.

Mr. MENENDEZ. Mr. Chairman, we have another generational difference. And, as Mr. Blumenauer said, my comments were not meant, of course, chronologically, for I have the deepest of respect for my elders, however, I am very seriously concerned—

Chairman HYDE. Well, Mr. Menendez—

Mr. MENENDEZ [continuing]. And I would just note to the Ranking Member as well that in essence—I am not looking for testimony. I just would like a simple yes or no, does the Administration

support or oppose, and I think that would be helpful to the Members of the Committee.

Chairman HYDE. Does the Administration support or oppose what?

Mr. MENENDEZ. On any given amendment—

Chairman HYDE. Whatever we are talking about?

Mr. MENENDEZ [continuing]. That may rise to the level—

Chairman HYDE. I suggest you just run down there and find someone from the Administration and they will whisper in your ear, but I am advised by the Parliamentarian that it is not regular order to engage in discussions with people in attendance who are not Members. Regular order is what we will be following.

Mr. MENENDEZ. Well, Mr. Chairman, I will be happy to remind the Committee of that in the future.

Chairman HYDE. Well, we welcome your—

Mr. LANTOS. Mr. Chairman?

Chairman HYDE. Yes, Mr. Lantos?

Mr. LANTOS. If I may for just one moment and in the spirit of comity to our friend from New Jersey, I ask unanimous consent to place in the record the letter you and I received from the Administration indicating the Administration's support for the bill without amendments, so we will know clearly what the Administration's position is.

Chairman HYDE. Yes. Without objection.

[The information referred to follows:]

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, August 1, 2001.

Hon. TOM LANTOS,
Committee on International Relations,
House of Representatives, Washington, DC.

DEAR MR. LANTOS: I am writing to express the importance President Bush and the Administration place on moving expeditiously to pass new legislation providing a firm and modern basis for controlling exports of dual-use commodities and for implementing foreign policy controls when needed.

As the President has personally stated, we strongly support S. 149 as reported by the Senate Banking Committee. We urge you and the other members of the International Relations Committee to report favorably a bill containing the provisions of S. 149 expeditiously, and without amendment.

In particular, we oppose the provisions in §§ 702 and 703 of H.R. 2581. These provisions would seriously impinge on the President's authorities under the Constitution to conduct foreign policy. In his June 6 statement concerning policy with respect to North Korea President Bush made clear the importance of "improved implementation of the Agreed Framework relating to North Korea's nuclear activities." These provisions would call into question our ability to meet U.S. commitments under the Agreed Framework. Section 123 of the Atomic Energy Act provides the Congress with the ability to consider carefully, and if it deems necessary, to disapprove, any nuclear cooperation agreement. Sections 702 and 703 of H.R. 2581 would raise the bar unnecessarily.

I ask for your support in working together to have the International Relations Committee report quickly, favorably, and without amendment a bill with the provisions of S. 149.

Sincerely,

PAUL V. KELLY.

Mr. LANTOS. Thank you, Mr. Chairman.

Chairman HYDE. The Chair notes the presence of a reporting quorum. Accordingly, we will suspend consideration of the present measure and turn to consideration of two other bills.

I ask unanimous consent that the Committee report favorably on the bills H.R. 2368, Vietnam Human Rights Act, and H.R. 2272, Coral Reef and Coastal Marine Conservation Act of 2001—

Mr. BEREUTER. Mr. Chairman, reserving the right to object.

Chairman HYDE. The gentleman reserves the right to object.

Let me finish. The Coastal Marine Conservation Act of 2001 with the amendments in the nature of a substitute which are at the desk and which all Members have before them deemed to be adopted.

[The text of the bills, H.R. 2368 and H.R. 2272, and amendments, follow:]

107TH CONGRESS
1ST SESSION

H. R. 2368

To promote freedom and democracy in Viet Nam.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2001

Mr. SMITH of New Jersey (for himself, Mr. TOM DAVIS of Virginia, Ms. SANCHEZ, Mr. ROHRABACHER, Ms. LOFGREN, Mr. ROYCE, Mr. WOLF, and Mr. GILMAN) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on Financial Services, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote freedom and democracy in Viet Nam.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Viet Nam Human Rights Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.

TITLE I—CONGRESSIONAL-EXECUTIVE COMMISSION ON VIET NAM

- Sec. 101. Establishment of Congressional-Executive Commission on Viet Nam.
- Sec. 102. Functions of the Commission.
- Sec. 103. Membership of the Commission.
- Sec. 104. Votes of the Commission.
- Sec. 105. Expenditure of appropriations.
- Sec. 106. Testimony of witnesses, production of evidence; issuance of subpoenas; administration of oaths.
- Sec. 107. Appropriations for the Commission.
- Sec. 108. Staff of the Commission.
- Sec. 109. Printing and binding costs.

TITLE II—PROMOTION OF FREEDOM AND DEMOCRACY IN VIET NAM

Subtitle A—Prohibition on Nonhumanitarian Assistance to the Government of Viet Nam

- Sec. 201. Bilateral nonhumanitarian assistance.
- Sec. 202. Multilateral nonhumanitarian assistance.

Subtitle B—Assistance to Support Democracy in Viet Nam

- Sec. 211. Assistance.

Subtitle C—United States Public Diplomacy

- Sec. 221. Radio Free Asia transmissions to Viet Nam.
- Sec. 222. United States educational and cultural exchange programs with Viet Nam.

Subtitle D—United States Refugee Policy

- Sec. 232. Refugee resettlement for nationals of Viet Nam.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Viet Nam is a one-party state, ruled and
4 controlled by the Vietnamese Communist Party.

5 (2) The Government of Viet Nam denies the
6 people of Viet Nam the right to change their govern-
7 ment and prohibits independent political, social, and
8 labor organizations.

9 (3)(A) The Government of Viet Nam consist-
10 ently pursues a policy of harassment, discrimination,

1 and intimidation, and sometimes of imprisonment
2 and other forms of detention, against those who
3 peacefully express dissent from government or party
4 policy.

5 (B) Recent victims of such mistreatment, which
6 violates the rights to freedom of expression and as-
7 sociation recognized in the Universal Declaration of
8 Human Rights, include Dr. Nguyen Dan Que, Dr.
9 Nguyen Thanh Giang, General Tran Do, Most Ven-
10 erable Thich Huyen Quang, Most Venerable Thich
11 Quang Do, Father Nguyen Van Ly, numerous lead-
12 ers of the Hoa Hao Buddhist Church and of inde-
13 pendent Protestant churches, and an undetermined
14 number of members of the Montagnard ethnic mi-
15 nority groups who participated in peaceful dem-
16 onstrations in the Central Highlands of Viet Nam
17 during February 2001.

18 (4) The Government of Viet Nam systematically
19 deprives its citizens of the fundamental right to free-
20 dom of religion. Although some freedom of worship
21 is permitted, believers are forbidden to participate in
22 religious activities except under circumstances rig-
23 idly defined and controlled by the government:

24 (A) In 1999 the Government issued a De-
25 cree Concerning Religious Activities, which de-

1 clared in pertinent part that “[a]ll activities
2 using religious belief in order to oppose the
3 State of the Socialist Republic of Viet Nam, to
4 prevent the believers from carrying out civic re-
5 sponsibilities, to sabotage the union of all the
6 people, to against the healthy culture of our na-
7 tion, as well as superstitious activities, will be
8 punished in conformity with the law”.

9 (B) The Unified Buddhist Church of Viet
10 Nam (UCBV), the largest religious denomina-
11 tion in the country, has been declared illegal by
12 the Government, and over the last twenty-five
13 years its clergy have often been imprisoned and
14 subjected to other forms of persecution. The
15 Patriarch of the Unified Buddhist Church, 83-
16 year-old Most Venerable Thich Huyen Quang,
17 has been detained for 21 years in a ruined tem-
18 ple in an isolated area of central Viet Nam.
19 Most Venerable Thich Quang Do, the Executive
20 President of the Unified Buddhist Church, has
21 also been in various forms of detention for
22 many years, and was recently rearrested and
23 placed under house arrest after he had pro-
24 posed to bring Most Venerable Thich Huyen
25 Quang to Saigon for medical treatment.

1 (C) The Hoa Hao Buddhist Church was
2 also declared to be illegal until 1999, when the
3 Government established an organization which
4 purports to govern the Hoa Hao. According to
5 the United States Commission on International
6 Religious Freedom, “[t]his organization is made
7 up almost entirely of Communist Party mem-
8 bers and apparently is not recognized as legiti-
9 mate by the vast majority of Hoa Haos . . .
10 [n]evertheless, [this government-sponsored or-
11 ganization] has sought to control all Hoa Hao
12 religious activity, particularly at the Hoa Hao
13 village, which is the center of Hoa Hao religious
14 life”. Hoa Hao believers who do not recognize
15 the legitimacy of the government organization
16 are denied the right to visit the Hoa Hao vil-
17 lage, to conduct traditional religious celebra-
18 tions, or to display Hoa Hao symbols. Many
19 have been arrested and subjected to administra-
20 tive detention, and several Hoa Hao have been
21 sentenced to prison terms for protesting these
22 denials of religious freedom.

23 (D) Independent Protestants, most of
24 whom are members of ethnic minority groups,
25 are subjected to particularly harsh treatment by

1 the Government of Viet Nam. According to the
2 United States Commission on International Re-
3 ligious Freedom, such treatment includes “po-
4 lice raids on homes and house churches, deten-
5 tion, imprisonment, confiscation of religious and
6 personal property, physical and psychological
7 abuse, and fines for engaging in unapproved re-
8 ligious activities (such as collective worship,
9 public religious expression and distribution of
10 religious literature, and performing baptisms,
11 marriages, or funeral services) . . . [i]n addi-
12 tion, it is reported that ethnic Hmong Protes-
13 tants have been forced by local officials to agree
14 to abandon their faith”.

15 (E) Other religious organizations, such as
16 the Catholic Church, are formally recognized by
17 the Government but are subjected to pervasive
18 regulation which violates the right to freedom of
19 religion. For instance, the Catholic Church is
20 forbidden to appoint its own bishops without
21 Government consent, which is frequently de-
22 nied, to accept seminarians without specific offi-
23 cial permission, and to profess Catholic doc-
24 trines which are inconsistent with Government
25 policy. A Catholic priest, Father Nguyen Van

1 Ly, was arrested in March 2001 and remains in
2 detention after submitting written testimony to
3 the United States Commission on International
4 Religious Freedom.

5 (F) The Government has also confiscated
6 numerous churches, temples, and other prop-
7 erties belonging to religious organizations. The
8 vast majority of these properties—even those
9 belonging to religious organizations formally
10 recognized by the Government—have never
11 been returned.

12 (5) Since 1975 the Government of Viet Nam
13 has persecuted veterans of the Army of the Republic
14 of Viet Nam and other Vietnamese who had opposed
15 the Viet Cong insurgency and the North Vietnamese
16 invasion of South Viet Nam. Such persecution typi-
17 cally included substantial terms in “re-education
18 camps”, where detainees were often subjected to tor-
19 ture and other forms of physical abuse, and in which
20 many died. Re-education camp survivors and their
21 families were often forced into internal exile in “New
22 Economic Zones”. Many of these former allies of the
23 United States, as well as members of their families,
24 continue until the present day to suffer various
25 forms of harassment and discrimination, including

1 denial of basic social benefits and exclusion from
2 higher education and employment.

3 (6)(A) The Government of Viet Nam has been
4 particularly harsh in its treatment of members of
5 the Montagnard ethnic minority groups of the Cen-
6 tral Highlands of Viet Nam, who were the first line
7 in the defense of South Viet Nam against invasion
8 from the North and who fought courageously beside
9 members of the Special Forces of the United States
10 Army, suffering disproportionately heavy casualties,
11 and saving the lives of many of their American and
12 Vietnamese comrades-in-arms.

13 (B) Since 1975 the Montagnard peoples have
14 been singled out for severe repression, in part be-
15 cause of their past association with the United
16 States and in part because their strong commitment
17 to their traditional way of life and to their Christian
18 religion is regarded as inconsistent with the absolute
19 loyalty and control demanded by the Communist sys-
20 tem.

21 (C) In February 2001 several thousand
22 Montagnards participated in a series of peaceful
23 demonstrations throughout the Central Highlands,
24 demanding religious freedom and restoration of their
25 confiscated lands, and the Government responded by

1 closing off the Central Highlands and sending in
2 military forces, tanks, and helicopter gunships.

3 (D) Credible reports by refugees who have es-
4 caped to Cambodia indicate that the Government
5 has executed some participants in the demonstra-
6 tions and has subjected others to imprisonment, tor-
7 ture, and other forms of physical abuse.

8 (E) The Government of Viet Nam has also
9 taken steps to prevent further Montagnards from es-
10 caping, and there are credible reports that Viet-
11 namese security forces in Cambodia are offering
12 bounties for the surrender of Montagnard asylum
13 seekers.

14 (7) The Government of Viet Nam has also per-
15 secuted members of other ethnic minority groups, in-
16 cluding the Khmer Krom from the Mekong Delta,
17 many of whom fought alongside United States mili-
18 tary personnel during the Viet Nam war and whose
19 Hinayana Buddhist religion is not among those rec-
20 ognized by the Government.

21 (8) The Government of Viet Nam also engages
22 in or condones serious violations of the rights of
23 workers. In August 1997, the United Nations Chil-
24 dren's Fund (UNICEF) reported that child labor ex-
25 ploitation is on the rise in Viet Nam with tens of

1 thousands of children under 15 years of age being
2 subjected to such exploitation. The government's of-
3 ficial labor export program also has subjected work-
4 ers, many of whom are women, to involuntary ser-
5 vitude, debt bondage, and other forms of abuse, and
6 the reaction of government officials to worker com-
7 plaints of such abuse has been to threaten the work-
8 ers with punishment if they do not desist in their
9 complaints.

10 (9)(A) United States refugee resettlement
11 programs for Vietnamese nationals, including the Or-
12 derly Departure Program (ODP), the Resettlement
13 Opportunities for Returning Vietnamese (ROVR)
14 program, and resettlement of boat people from ref-
15 ugee camps throughout Southeast Asia, were author-
16 ized by law in order to rescue Vietnamese nationals
17 who have suffered persecution on account of their
18 wartime associations with the United States, as well
19 as those who currently have a well-founded fear of
20 persecution on account of race, religion, nationality,
21 political opinion, or membership in a particular so-
22 cial group.

23 (B) In general, these programs have served
24 their purpose well. However, many refugees who
25 were eligible for these programs were unfairly denied

1 or excluded, in some cases by vindictive or corrupt
2 Communist officials who controlled access to the
3 programs, and in others by United States personnel
4 who imposed unduly restrictive interpretations of
5 program criteria. These unfairly excluded refugees
6 include some of those with the most compelling
7 cases, including many Montagnard combat veterans
8 and their families.

9 (10) The Government of Viet Nam systemati-
10 cally jams broadcasts by Radio Free Asia, an inde-
11 pendent broadcast service funded by the United
12 States in order to provide news and entertainment
13 to the people of countries in Asia whose governments
14 deny the right to freedom of expression and of the
15 press.

16 (11) In 1995 the Governments of the United
17 States and Viet Nam announced the “normaliza-
18 tion” of diplomatic relations. In 1998 then-President
19 Clinton waived the application of section 402 of the
20 Trade Act of 1974 (commonly known as the “Jack-
21 son-Vanik Amendment”), which restricts economic
22 assistance to countries with non-market economies
23 whose governments also restrict freedom of emigra-
24 tion. In 1999 the Governments of the United States
25 and Viet Nam announced “agreement in principle”

1 on a bilateral trade agreement. This agreement was
2 signed in 2000 and has been presented to Congress
3 for approval or disapproval.

4 (12) The Congress and the American people are
5 united in their determination that the extension or
6 expansion of trade relations with a country whose
7 government engages in serious and systematic viola-
8 tions of fundamental human rights must not be con-
9 strued as a statement of approval or complacency
10 about such practices. The promotion of freedom and
11 democracy around the world—and particularly for
12 people who have suffered in large part because of
13 their past associations with the United States and
14 because they share our values—is and must continue
15 to be a central objective of United States foreign
16 policy.

17 **SEC. 3. PURPOSE.**

18 The purpose of this Act is to promote the develop-
19 ment of freedom and democracy in Viet Nam.

1 **TITLE I—CONGRESSIONAL-EXEC-**
2 **UTIVE COMMISSION ON VIET**
3 **NAM**

4 **SEC. 101. ESTABLISHMENT OF CONGRESSIONAL-EXECU-**
5 **TIVE COMMISSION ON VIET NAM.**

6 There is established a Congressional-Executive Com-
7 mission on Viet Nam (in this title referred to as the “Com-
8 mission”).

9 **SEC. 102. FUNCTIONS OF THE COMMISSION.**

10 (a) **MONITORING COMPLIANCE WITH HUMAN**
11 **RIGHTS.**—The Commission shall monitor the acts of the
12 Government of Viet Nam which reflect compliance with
13 or violation of human rights, in particular, those contained
14 in the International Covenant on Civil and Political Rights
15 and in the Universal Declaration of Human Rights, in-
16 cluding, but not limited to, effectively affording—

17 (1) the right to engage in free expression;

18 (2) the right to peaceful assembly;

19 (3) religious freedom, including the right to
20 worship and to participate in religious activities and
21 institutions free of involvement of and interference
22 by the government;

23 (4) the right to liberty of movement and free-
24 dom to choose a residence within Viet Nam and the
25 right to leave from and return to Viet Nam;

- 1 (5) the right of a criminal defendant—
- 2 (A) to be tried in his or her presence, and
- 3 to defend himself or herself in person or
- 4 through legal assistance of his or her own
- 5 choosing;
- 6 (B) to be informed, if he or she does not
- 7 have legal assistance, of the right set forth in
- 8 subparagraph (A);
- 9 (C) to have legal assistance assigned to
- 10 him or her in any case in which the interests
- 11 of justice so require and without payment by
- 12 him or her in any such case if he or she does
- 13 not have sufficient means to pay for it;
- 14 (D) to a fair and public hearing by a com-
- 15 petent, independent, and impartial tribunal es-
- 16 tablished by the law;
- 17 (E) to be presumed innocent until proved
- 18 guilty according to law; and
- 19 (F) to be tried without undue delay;
- 20 (6) the right to be free from torture and other
- 21 forms of cruel or unusual punishment;
- 22 (7) protection of internationally recognized
- 23 worker rights;
- 24 (8) freedom from incarceration as punishment
- 25 for political opposition to the government;

1 (9) freedom from incarceration as punishment
2 for exercising or advocating human rights (including
3 those described in this section);

4 (10) freedom from arbitrary arrest, detention,
5 or exile;

6 (11) the right to fair and public hearings by an
7 independent tribunal for the determination of a citi-
8 zen's rights and obligations; and

9 (12) free choice of employment.

10 (b) VICTIMS LISTS.—The Commission shall compile
11 and maintain lists of persons believed to be imprisoned,
12 detained, or placed under house arrest, tortured, or other-
13 wise persecuted by the Government of Viet Nam due to
14 their pursuit of the rights described in subsection (a). In
15 compiling such lists, the Commission shall exercise appro-
16 priate discretion, including concerns regarding the safety
17 and security of, and benefit to, the persons who may be
18 included on the lists and their families.

19 (c) MONITORING DEVELOPMENT OF RULE OF
20 LAW.—The Commission shall monitor the development of
21 the rule of law in Viet Nam, including, but not limited
22 to—

23 (1) progress toward the development of institu-
24 tions of democratic governance;

1 (2) processes by which statutes, regulations,
2 rules, and other legal acts of the Government of Viet
3 Nam are developed and become binding within Viet
4 Nam;

5 (3) the extent to which statutes, regulations,
6 rules, administrative and judicial decisions, and
7 other legal acts of the Government of Viet Nam are
8 published and are made accessible to the public;

9 (4) the extent to which administrative and judi-
10 cial decisions are supported by statements of reasons
11 that are based upon written statutes, regulations,
12 rules and other legal acts of the Government of Viet
13 Nam;

14 (5) the extent to which individuals are treated
15 equally under the laws of Viet Nam without regard
16 to citizenship, race, religion, political opinion, or cur-
17 rent or former associations;

18 (6) the extent to which administrative and judi-
19 cial decisions are independent of political pressure or
20 governmental interference and are reviewed by enti-
21 ties of appellate jurisdiction; and

22 (7) the extent to which laws in Viet Nam are
23 written and administered in ways that are consistent
24 with international human rights standards, including

1 the requirements of the International Covenant on
2 Civil and Political Rights.

3 (d) BILATERAL COOPERATION.—The Commission
4 shall monitor and encourage the development of programs
5 and activities of the United States Government and pri-
6 vate organizations with a view toward increasing the inter-
7 change of people and ideas between the United States and
8 Viet Nam and expanding cooperation in areas that in-
9 clude, but are not limited to—

10 (1) increasing enforcement of human rights de-
11 scribed in subsection (a); and

12 (2) developing the rule of law in Viet Nam.

13 (e) CONTACTS WITH NONGOVERNMENTAL ORGANI-
14 ZATIONS.—In performing the functions described in sub-
15 sections (a) through (d), the Commission shall, as appro-
16 priate, seek out and maintain contacts with nongovern-
17 mental organizations, including receiving reports and up-
18 dates from such organizations and evaluating such re-
19 ports.

20 (f) ANNUAL REPORTS.—The Commission shall issue
21 a report to the President and the Congress not later than
22 12 months after the date of the enactment of this Act,
23 and not later than the end of each 12-month period there-
24 after, setting forth the findings of the Commission during
25 the preceding 12-month period, in carrying out sub-

1 sections (a) through (c). The Commission's report may
2 contain recommendations for legislative or executive ac-
3 tion.

4 (g) SPECIFIC INFORMATION IN ANNUAL REPORTS.—
5 The Commission's report under subsection (f) shall in-
6 clude specific information concerning the nature and im-
7 plementation of laws or policies concerning the rights set
8 forth in paragraphs (1) through (12) of subsection (a),
9 and concerning restrictions applied to or discrimination
10 against persons exercising any of the rights set forth in
11 such paragraphs.

12 (h) CONGRESSIONAL HEARINGS ON ANNUAL RE-
13 PORTS.—(1) The Committee on International Relations of
14 the House of Representatives shall, not later than 30 days
15 after the receipt by the Congress of the report referred
16 to in subsection (f), hold hearings on the contents of the
17 report, including any recommendations contained therein,
18 for the purpose of receiving testimony from Members of
19 Congress, and such appropriate representatives of Federal
20 departments and agencies, and interested persons and
21 groups, as the committee deems advisable, with a view to
22 reporting to the House of Representatives any appropriate
23 legislation in furtherance of such recommendations. If any
24 such legislation is considered by the Committee on Inter-
25 national Relations within 45 days after receipt by the Con-

1 gress of the report referred to in subsection (f), it shall
2 be reported by the committee not later than 60 days after
3 receipt by the Congress of such report.

4 (2) The provisions of paragraph (1) are enacted by
5 the Congress—

6 (A) as an exercise of the rulemaking power of
7 the House of Representatives, and as such are
8 deemed a part of the rules of the House, and they
9 supersede other rules only to the extent that they
10 are inconsistent therewith; and

11 (B) with full recognition of the constitutional
12 right of the House to change the rules (so far as re-
13 lating to the procedure of the House) at any time,
14 in the same manner and to the same extent as in
15 the case of any other rule of the House.

16 (i) SUPPLEMENTAL REPORTS.—The Commission
17 may submit to the President and the Congress reports
18 that supplement the reports described in subsection (f),
19 as appropriate, in carrying out subsections (a) through
20 (c).

21 **SEC. 103. MEMBERSHIP OF THE COMMISSION.**

22 (a) SELECTION AND APPOINTMENT OF MEMBERS.—
23 The Commission shall be composed of 17 members as fol-
24 lows:

1 (1) Five Members of the House of Representa-
2 tives appointed by the Speaker of the House of Rep-
3 representatives. Three members shall be selected from
4 the majority party and two members shall be se-
5 lected, after consultation with the minority leader of
6 the House, from the minority party.

7 (2) Five Members of the Senate appointed by
8 the President of the Senate. Three members shall be
9 selected, after consultation with the majority leader
10 of the Senate, from the majority party, and two
11 members shall be selected, after consultation with
12 the minority leader of the Senate, from the minority
13 party.

14 (3) One representative of the Department of
15 State, appointed by the President of the United
16 States from among officers and employees of that
17 Department.

18 (4) One representative of the Department of
19 Commerce, appointed by the President of the United
20 States from among officers and employees of that
21 Department.

22 (5) One representative of the Department of
23 Labor, appointed by the President of the United
24 States from among officers and employees of that
25 Department.

1 (6) Four public representatives, appointed by
2 the President of the United States, who shall be citi-
3 zens of the United States not employed by the
4 United States Government and who have dem-
5 onstrated expertise in and commitment to human
6 rights in Viet Nam.

7 (b) CHAIRMAN AND COCHAIRMAN.—

8 (1) DESIGNATION OF CHAIRMAN.—At the be-
9 ginning of each odd-numbered Congress, the Presi-
10 dent of the Senate, on the recommendation of the
11 majority leader, shall designate one of the members
12 of the Commission from the Senate as Chairman of
13 the Commission. At the beginning of each even-num-
14 bered Congress, the Speaker of the House of Rep-
15 resentatives shall designate one of the members of
16 the Commission from the House as Chairman of the
17 Commission.

18 (2) DESIGNATION OF COCHAIRMAN.—At the be-
19 ginning of each odd-numbered Congress, the Speak-
20 er of the House of Representatives shall designate
21 one of the members of the Commission from the
22 House as Cochairman of the Commission. At the be-
23 ginning of each even-numbered Congress, the Presi-
24 dent of the Senate, on the recommendation of the
25 majority leader, shall designate one of the members

1 of the Commission from the Senate as Cochairman
2 of the Commission.

3 **SEC. 104. VOTES OF THE COMMISSION.**

4 Decisions of the Commission, including adoption of
5 reports and recommendations to the executive branch or
6 to the Congress, shall be made by a majority vote of the
7 members of the Commission present and voting. Two-
8 thirds of the Members of the Commission shall constitute
9 a quorum for purposes of conducting business.

10 **SEC. 105. EXPENDITURE OF APPROPRIATIONS.**

11 For each fiscal year for which an appropriation is
12 made to the Commission, the Commission shall issue a
13 report to the Congress on its expenditures under that ap-
14 propriation.

15 **SEC. 106. TESTIMONY OF WITNESSES, PRODUCTION OF EVI-**
16 **DENCE; ISSUANCE OF SUBPOENAS; ADMINIS-**
17 **TRATION OF OATHS.**

18 In carrying out this title, the Commission may re-
19 quire, by subpoena or otherwise, the attendance and testi-
20 mony of such witnesses and the production of such books,
21 records, correspondence, memoranda, papers, documents,
22 and electronically recorded data as it considers necessary.
23 Subpoenas may be issued only pursuant to a two-thirds
24 vote of members of the Commission present and voting.
25 Subpoenas may be issued over the signature of the Chair-

1 man of the Commission or any member designated by the
2 Chairman, and may be served by any person designated
3 by the Chairman or such member. The Chairman of the
4 Commission, or any member designated by the Chairman,
5 may administer oaths to any witness.

6 **SEC. 107. APPROPRIATIONS FOR THE COMMISSION.**

7 (a) AUTHORIZATION; DISBURSEMENTS.—

8 (1) AUTHORIZATION.—There are authorized to
9 be appropriated to the Commission for fiscal year
10 2002, and each fiscal year thereafter, such sums as
11 may be necessary to enable it to carry out its func-
12 tions. Appropriations to the Commission are author-
13 ized to remain available until expended.

14 (2) DISBURSEMENTS.—Appropriations to the
15 Commission shall be disbursed on vouchers
16 approved—

17 (A) jointly by the Chairman and the Co-
18 chairman; or

19 (B) by a majority of the members of the
20 personnel and administration committee estab-
21 lished pursuant to section 108.

22 (b) FOREIGN TRAVEL FOR OFFICIAL PURPOSES.—

23 Foreign travel for official purposes by members and staff
24 of the Commission may be authorized by either the Chair-
25 man or the Cochairman.

1 **SEC. 108. STAFF OF THE COMMISSION.**

2 (a) PERSONNEL AND ADMINISTRATION COM-
3 MITTEE.—The Commission shall have a personnel and ad-
4 ministration committee composed of the Chairman, the
5 Cochairman, the senior member of the Commission from
6 the minority party of the House of Representatives, and
7 the senior member of the Commission from the minority
8 party of the Senate.

9 (b) COMMITTEE FUNCTIONS.—All decisions per-
10 taining to the hiring, firing, and fixing of pay of personnel
11 of the Commission shall be by a majority vote of the per-
12 sonnel and administration committee, except that—

13 (1) the Chairman shall be entitled to appoint
14 and fix the pay of the staff director, and the Co-
15 chairman shall be entitled to appoint and fix the pay
16 of the Cochairman's senior staff member; and

17 (2) the Chairman and Cochairman shall each
18 have the authority to appoint, with the approval of
19 the personnel and administration committee, at least
20 four professional staff members who shall be respon-
21 sible to the Chairman or the Cochairman (as the
22 case may be) who appointed them.

23 Subject to subsection (d), the personnel and administra-
24 tion committee may appoint and fix the pay of such other
25 personnel as it considers desirable.

1 (c) STAFF APPOINTMENTS.—All staff appointments
2 shall be made without regard to the provisions of title 5,
3 United States Code, governing appointments in the com-
4 petitive service, and without regard to the provisions of
5 chapter 51 and subchapter III of chapter 53 of such title
6 relating to classification and general schedule pay rates.

7 (d) QUALIFICATIONS OF PROFESSIONAL STAFF.—
8 The personnel and administration committee shall ensure
9 that the professional staff of the Commission consists of
10 persons with expertise in areas including human rights,
11 internationally recognized worker rights, international eco-
12 nomics, law (including international law), rule of law and
13 other foreign assistance programming, the politics of Viet
14 Nam, economy and culture, and the language of Viet
15 Nam.

16 (e) COMMISSION EMPLOYEES AS CONGRESSIONAL
17 EMPLOYEES.—

18 (1) IN GENERAL.—For purposes of pay and
19 other employment benefits, rights, and privileges,
20 and for all other purposes, any employee of the
21 Commission shall be considered to be a congressional
22 employee as defined in section 2107 of title 5,
23 United States Code.

24 (2) COMPETITIVE STATUS.—For purposes of
25 section 3304(c)(1) of title 5, United States Code,

1 employees of the Commission shall be considered as
2 if they are in positions in which they are paid by
3 the Secretary of the Senate or the Clerk of the
4 House of Representatives.

5 **SEC. 109. PRINTING AND BINDING COSTS.**

6 For purposes of costs relating to printing and bind-
7 ing, including the costs of personnel detailed from the
8 Government Printing Office, the Commission shall be
9 deemed to be a committee of the Congress.

10 **TITLE II—PROMOTION OF FREE-**
11 **DOM AND DEMOCRACY IN**
12 **VIET NAM**

13 **Subtitle A—Prohibition on Non-**
14 **humanitarian Assistance to the**
15 **Government of Viet Nam**

16 **SEC. 201. BILATERAL NONHUMANITARIAN ASSISTANCE.**

17 (a) IN GENERAL.—United States nonhumanitarian
18 assistance may not be provided to the Government of Viet
19 Nam for fiscal year 2002 and each subsequent fiscal year
20 unless the President determines and certifies to Congress
21 for such fiscal year that—

22 (1) the Government of Viet Nam has released
23 all political and religious prisoners from imprison-
24 ment, house arrest, and other forms of detention;

1 (2) the Government of Viet Nam respects the
2 right to freedom of religion, including the right to
3 participate in religious activities and institutions
4 without interference by or involvement of the Gov-
5 ernment;

6 (3) the Government of Viet Nam does not vio-
7 late the human rights of members of ethnic minority
8 groups in the Central Highlands or elsewhere in Viet
9 Nam; and

10 (4) neither any official of the Government of
11 Viet Nam nor any entity wholly or partly owned by
12 the Government of Viet Nam is complicit in a severe
13 form of trafficking in persons.

14 (b) DEFINITIONS.—In this section:

15 (1) SEVERE FORM OF TRAFFICKING IN PER-
16 PERSONS.—The term “severe form of trafficking in per-
17 sons” means any activity described in section 103(8)
18 of the Trafficking Victims Protection Act of 2000
19 (Public Law 106–386 (114 Stat. 1470); 22 U.S.C.
20 7102(8)).

21 (2) UNITED STATES NONHUMANITARIAN AS-
22 SISTANCE.—The term “United States nonhumani-
23 tarian assistance” means—

24 (A) any assistance under the Foreign As-
25 sistance Act of 1961 (including programs under

1 title IV of chapter 2 of part I of that Act, relat-
2 ing to the Overseas Private Investment Cor-
3 poration), other than—

4 (i) disaster relief assistance, including
5 any assistance under chapter 9 of part I of
6 that Act;

7 (ii) assistance which involves the pro-
8 vision of food (including monetization of
9 food) or medicine; and

10 (iii) assistance for refugees;

11 (B) sales, or financing on any terms, under
12 the Arms Export Control Act; and

13 (C) financing under the Export-Import
14 Bank Act of 1945.

15 **SEC. 202. MULTILATERAL NONHUMANITARIAN ASSIST-**
16 **ANCE.**

17 The Secretary of the Treasury shall instruct the
18 United States Executive Director of each multilateral de-
19 velopment bank and of the International Monetary Fund
20 to use the voice, vote, and influence of the United States
21 to deny any loan or other utilization of the funds of such
22 bank or institution (other than for humanitarian assist-
23 ance) to Viet Nam for fiscal year 2002 and each subse-
24 quent fiscal year unless the President determines and cer-
25 tifies to Congress for such fiscal year that the require-

1 ments of paragraphs (1) through (4) of section 201(a)
2 have been met.

3 **Subtitle B—Assistance to Support**
4 **Democracy in Viet Nam**

5 **SEC. 211. ASSISTANCE.**

6 (a) IN GENERAL.—The President is authorized to
7 provide assistance, through appropriate nongovernmental
8 organizations, for the support of individuals and organiza-
9 tions to promote human rights and nonviolent democratic
10 change in Viet Nam.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the President to carry
13 out subsection (a) \$2,000,000 for each of the fiscal years
14 2002 and 2003.

15 **Subtitle C—United States Public**
16 **Diplomacy**

17 **SEC. 221. RADIO FREE ASIA TRANSMISSIONS TO VIET NAM.**

18 (a) POLICY OF THE UNITED STATES.—It is the pol-
19 icy of the United States to take such measures as are nec-
20 essary to overcome the jamming of Radio Free Asia by
21 the Government of Viet Nam.

22 (b) REPORT TO CONGRESS.—Not later than 6
23 months after the date of the enactment of this Act and
24 every 6 months thereafter, the Secretary of State shall
25 submit to the Congress a report on efforts by the United

1 States Government to secure transmission sites for Radio
2 Free Asia in countries in close geographical proximity to
3 Viet Nam.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—In addi-
5 tion to such amounts as are otherwise authorized to be
6 appropriated for the Broadcasting Board of Governors,
7 there are authorized to be appropriated to carry out the
8 policy under subsection (a) \$9,100,000 for the fiscal year
9 2002 and \$1,100,000 for the fiscal year 2003.

10 **SEC. 222. UNITED STATES EDUCATIONAL AND CULTURAL**
11 **EXCHANGE PROGRAMS WITH VIET NAM.**

12 (a) POLICY OF THE UNITED STATES.—It is the pol-
13 icy of the United States that programs of educational and
14 cultural exchange with Viet Nam should actively promote
15 progress toward freedom and democracy in Viet Nam by
16 providing opportunities to Vietnamese nationals from a
17 wide range of occupations and perspectives to see freedom
18 and democracy in action and, also, by ensuring that Viet-
19 namese nationals who have already demonstrated a com-
20 mitment to these values are included in such programs.

21 (b) REPORT TO CONGRESS.—Not later than 6
22 months after the date of the enactment of this Act and
23 every 6 months thereafter, the Secretary of State shall
24 submit to the Congress a report on efforts to ensure that
25 programs with Viet Nam promote the policy set forth in

1 subsection (a) and with section 102 of the Human Rights,
2 Refugee, and Other Foreign Policy Provisions Act of 1996
3 regarding participation in programs of educational and
4 cultural exchange.

5 **Subtitle D—United States Refugee**
6 **Policy**

7 **SEC. 232. REFUGEE RESETTLEMENT FOR NATIONALS OF**
8 **VIET NAM.**

9 (a) POLICY OF THE UNITED STATES.—It is the pol-
10 icy of the United States to offer refugee resettlement to
11 nationals of Viet Nam (including members of the
12 Montagnard ethnic minority groups) who were eligible for
13 the Orderly Departure Program or any other United
14 States refugee program and who were deemed ineligible
15 due to administrative error or who for reasons beyond the
16 control of such individuals (including the inability to pay
17 bribes demanded by officials of the Government of Viet
18 Nam) were unable to apply for such programs in compli-
19 ance with deadlines imposed by the Department of State.

20 (b) REPORT TO CONGRESS.—Not later than 6
21 months after the date of the enactment of this Act and
22 every 6 months thereafter, the Secretary of State shall
23 submit to the Congress a report on steps taken in the pre-
24 ceding 6 months to carry out the policy under subsection
25 (a).

1 (c) AUTHORIZED ACTIVITY.—Of the amounts author-
2 ized to be appropriated to the Department of State for
3 Migration and Refugee Assistance for each of the fiscal
4 years 2001, 2002, and 2003, such sums as may be nec-
5 essary are authorized to be made available for the protec-
6 tion (including resettlement in appropriate cases) of Viet-
7 nameese refugees and asylum seekers, including
8 Montagnards in Cambodia.

Æ

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2368
OFFERED BY MR. SMITH OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Viet Nam Human Rights Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Purpose.

TITLE II—PROMOTION OF FREEDOM AND DEMOCRACY IN VIET
NAM

Subtitle A—Prohibition on Nonhumanitarian Assistance to the Government of
Viet Nam

Sec. 201. Bilateral nonhumanitarian assistance.

Sec. 202. Multilateral nonhumanitarian assistance.

Subtitle B—Assistance to Support Democracy in Viet Nam

Sec. 211. Assistance.

Subtitle C—United States Public Diplomacy

Sec. 221. Radio Free Asia transmissions to Viet Nam.

Sec. 222. United States educational and cultural exchange programs with Viet
Nam.

Subtitle D—United States Refugee Policy

Sec. 232. Refugee resettlement for nationals of Viet Nam.

Subtitle E—Annual Report on Progress Toward Freedom and Democracy in
Viet Nam

Sec. 241. Annual report.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. FINDINGS.**

3 Congress finds the following:

4 (1) Viet Nam is a one-party state, ruled and
5 controlled by the Vietnamese Communist Party.

6 (2) The Government of Viet Nam denies the
7 people of Viet Nam the right to change their govern-
8 ment and prohibits independent political, social, and
9 labor organizations.

10 (3)(A) The Government of Viet Nam consist-
11 ently pursues a policy of harassment, discrimination,
12 and intimidation, and sometimes of imprisonment
13 and other forms of detention, against those who
14 peacefully express dissent from government or party
15 policy.

16 (B) Recent victims of such mistreatment, which
17 violates the rights to freedom of expression and as-
18 sociation recognized in the Universal Declaration of
19 Human Rights, include Dr. Nguyen Dan Que, Dr.
20 Nguyen Thanh Giang, General Tran Do, Most Ven-
21 erable Thich Huyen Quang, Most Venerable Thich
22 Quang Do, Father Nguyen Van Ly, numerous lead-
23 ers of the Hoa Hao Buddhist Church and of inde-
24 pendent Protestant churches, and an undetermined
25 number of members of the Montagnard ethnic mi-

1 nosity groups who participated in peaceful dem-
2 onstrations in the Central Highlands of Viet Nam
3 during February 2001.

4 (4) The Government of Viet Nam systematically
5 deprives its citizens of the fundamental right to free-
6 dom of religion. Although some freedom of worship
7 is permitted, believers are forbidden to participate in
8 religious activities except under circumstances rig-
9 idly defined and controlled by the government:

10 (A) In 1999 the Government issued a De-
11 cree Concerning Religious Activities, which de-
12 clared in pertinent part that “[a]ll activities
13 using religious belief in order to oppose the
14 State of the Socialist Republic of Viet Nam, to
15 prevent the believers from carrying out civic re-
16 sponsibilities, to sabotage the union of all the
17 people, to against the healthy culture of our na-
18 tion, as well as superstitious activities, will be
19 punished in conformity with the law”.

20 (B) The Unified Buddhist Church of Viet
21 Nam (UCBV), the largest religious denomina-
22 tion in the country, has been declared illegal by
23 the Government, and over the last twenty-five
24 years its clergy have often been imprisoned and
25 subjected to other forms of persecution. The

1 Patriarch of the Unified Buddhist Church, 83-
2 year-old Most Venerable Thich Huyen Quang,
3 has been detained for 21 years in a ruined tem-
4 ple in an isolated area of central Viet Nam.
5 Most Venerable Thich Quang Do, the Executive
6 President of the Unified Buddhist Church, has
7 also been in various forms of detention for
8 many years, and was recently rearrested and
9 placed under house arrest after he had pro-
10 posed to bring Most Venerable Thich Huyen
11 Quang to Saigon for medical treatment.

12 (C) The Hoa Hao Buddhist Church was
13 also declared to be illegal until 1999, when the
14 Government established an organization which
15 purports to govern the Hoa Hao. According to
16 the United States Commission on International
17 Religious Freedom, “[t]his organization is made
18 up almost entirely of Communist Party mem-
19 bers and apparently is not recognized as legiti-
20 mate by the vast majority of Hoa Haos . . .
21 [n]evertheless, [this government-sponsored or-
22 ganization] has sought to control all Hoa Hao
23 religious activity, particularly at the Hoa Hao
24 village, which is the center of Hoa Hao religious
25 life”. Hoa Hao believers who do not recognize

1 the legitimacy of the government organization
2 are denied the right to visit the Hoa Hao vil-
3 lage, to conduct traditional religious celebra-
4 tions, or to display Hoa Hao symbols. Many
5 have been arrested and subjected to administra-
6 tive detention, and several Hoa Hao have been
7 sentenced to prison terms for protesting these
8 denials of religious freedom.

9 (D) Independent Protestants, most of
10 whom are members of ethnic minority groups,
11 are subjected to particularly harsh treatment by
12 the Government of Viet Nam. According to the
13 United States Commission on International Re-
14 ligious Freedom, such treatment includes “po-
15 lice raids on homes and house churches, deten-
16 tion, imprisonment, confiscation of religious and
17 personal property, physical and psychological
18 abuse, and fines for engaging in unapproved re-
19 ligious activities (such as collective worship,
20 public religious expression and distribution of
21 religious literature, and performing baptisms,
22 marriages, or funeral services) . . . [i]n addi-
23 tion, it is reported that ethnic Hmong Protes-
24 tants have been forced by local officials to agree
25 to abandon their faith”.

1 (E) Other religious organizations, such as
2 the Catholic Church, are formally recognized by
3 the Government but are subjected to pervasive
4 regulation which violates the right to freedom of
5 religion. For instance, the Catholic Church is
6 forbidden to appoint its own bishops without
7 Government consent, which is frequently de-
8 nied, to accept seminarians without specific offi-
9 cial permission, and to profess Catholic doc-
10 trines which are inconsistent with Government
11 policy. A Catholic priest, Father Nguyen Van
12 Ly, was arrested in March 2001 and remains in
13 detention after submitting written testimony to
14 the United States Commission on International
15 Religious Freedom.

16 (F) The Government has also confiscated
17 numerous churches, temples, and other prop-
18 erties belonging to religious organizations. The
19 vast majority of these properties—even those
20 belonging to religious organizations formally
21 recognized by the Government—have never
22 been returned.

23 (5) Since 1975 the Government of Viet Nam
24 has persecuted veterans of the Army of the Republic
25 of Viet Nam and other Vietnamese who had opposed

1 the Viet Cong insurgency and the North Vietnamese
2 invasion of South Viet Nam. Such persecution typi-
3 cally included substantial terms in “re-education
4 camps”, where detainees were often subjected to tor-
5 ture and other forms of physical abuse, and in which
6 many died. Re-education camp survivors and their
7 families were often forced into internal exile in “New
8 Economic Zones”. Many of these former allies of the
9 United States, as well as members of their families,
10 continue until the present day to suffer various
11 forms of harassment and discrimination, including
12 denial of basic social benefits and exclusion from
13 higher education and employment.

14 (6)(A) The Government of Viet Nam has been
15 particularly harsh in its treatment of members of
16 the Montagnard ethnic minority groups of the Cen-
17 tral Highlands of Viet Nam, who were the first line
18 in the defense of South Viet Nam against invasion
19 from the North and who fought courageously beside
20 members of the Special Forces of the United States
21 Army, suffering disproportionately heavy casualties,
22 and saving the lives of many of their American and
23 Vietnamese comrades-in-arms.

24 (B) Since 1975 the Montagnard peoples have
25 been singled out for severe repression, in part be-

1 cause of their past association with the United
2 States and in part because their strong commitment
3 to their traditional way of life and to their Christian
4 religion is regarded as inconsistent with the absolute
5 loyalty and control demanded by the Communist sys-
6 tem.

7 (C) In February 2001 several thousand
8 Montagnards participated in a series of peaceful
9 demonstrations throughout the Central Highlands,
10 demanding religious freedom and restoration of their
11 confiscated lands, and the Government responded by
12 closing off the Central Highlands and sending in
13 military forces, tanks, and helicopter gunships.

14 (D) Credible reports by refugees who have es-
15 caped to Cambodia indicate that the Government
16 has executed some participants in the demonstra-
17 tions and has subjected others to imprisonment, tor-
18 ture, and other forms of physical abuse.

19 (E) The Government of Viet Nam has also
20 taken steps to prevent further Montagnards from es-
21 caping, and there are credible reports that Viet-
22 namese security forces in Cambodia are offering
23 bounties for the surrender of Montagnard asylum
24 seekers.

1 (7) The Government of Viet Nam has also per-
2 secuted members of other ethnic minority groups, in-
3 cluding the Khmer Krom from the Mekong Delta,
4 many of whom fought alongside United States mili-
5 tary personnel during the Viet Nam war and whose
6 Hinayana Buddhist religion is not among those rec-
7 ognized by the Government.

8 (8) The Government of Viet Nam also engages
9 in or condones serious violations of the rights of
10 workers. In August 1997, the United Nations Chil-
11 dren's Fund (UNICEF) reported that child labor ex-
12 ploitation is on the rise in Viet Nam with tens of
13 thousands of children under 15 years of age being
14 subjected to such exploitation. The government's of-
15 ficial labor export program also has subjected work-
16 ers, many of whom are women, to involuntary ser-
17 vitude, debt bondage, and other forms of abuse, and
18 the reaction of government officials to worker com-
19 plaints of such abuse has been to threaten the work-
20 ers with punishment if they do not desist in their
21 complaints.

22 (9)(A) United States refugee resettlement pro-
23 grams for Vietnamese nationals, including the Or-
24 derly Departure Program (ODP), the Resettlement
25 Opportunities for Returning Vietnamese (ROVR)

1 program, and resettlement of boat people from ref-
2 ugee camps throughout Southeast Asia, were author-
3 ized by law in order to rescue Vietnamese nationals
4 who have suffered persecution on account of their
5 wartime associations with the United States, as well
6 as those who currently have a well-founded fear of
7 persecution on account of race, religion, nationality,
8 political opinion, or membership in a particular so-
9 cial group.

10 (B) In general, these programs have served
11 their purpose well. However, many refugees who
12 were eligible for these programs were unfairly denied
13 or excluded, in some cases by vindictive or corrupt
14 Communist officials who controlled access to the
15 programs, and in others by United States personnel
16 who imposed unduly restrictive interpretations of
17 program criteria. These unfairly excluded refugees
18 include some of those with the most compelling
19 cases, including many Montagnard combat veterans
20 and their families.

21 (10) The Government of Viet Nam systemati-
22 cally jams broadcasts by Radio Free Asia, an inde-
23 pendent broadcast service funded by the United
24 States in order to provide news and entertainment
25 to the people of countries in Asia whose governments

1 deny the right to freedom of expression and of the
2 press.

3 (11) In 1995 the Governments of the United
4 States and Viet Nam announced the “normaliza-
5 tion” of diplomatic relations. In 1998 then-President
6 Clinton waived the application of section 402 of the
7 Trade Act of 1974 (commonly known as the “Jack-
8 son-Vanik Amendment”), which restricts economic
9 assistance to countries with non-market economies
10 whose governments also restrict freedom of emigra-
11 tion. In 1999 the Governments of the United States
12 and Viet Nam announced “agreement in principle”
13 on a bilateral trade agreement. This agreement was
14 signed in 2000 and has been presented to Congress
15 for approval or disapproval.

16 (12) The Congress and the American people are
17 united in their determination that the extension or
18 expansion of trade relations with a country whose
19 government engages in serious and systematic viola-
20 tions of fundamental human rights must not be con-
21 strued as a statement of approval or complacency
22 about such practices. The promotion of freedom and
23 democracy around the world—and particularly for
24 people who have suffered in large part because of
25 their past associations with the United States and

1 because they share our values—is and must continue
2 to be a central objective of United States foreign
3 policy.

4 **SEC. 102. PURPOSE.**

5 The purpose of this Act is to promote the develop-
6 ment of freedom and democracy in Viet Nam.

7 **TITLE II—PROMOTION OF FREE-**
8 **DOM AND DEMOCRACY IN**
9 **VIET NAM**

10 **Subtitle A—Prohibition on Non-**
11 **humanitarian Assistance to the**
12 **Government of Viet Nam**

13 **SEC. 201. BILATERAL NONHUMANITARIAN ASSISTANCE.**

14 (a) ASSISTANCE.—

15 (1) IN GENERAL.—Except as provided in sub-
16 section (b), United States nonhumanitarian assist-
17 ance may not be provided to the Government of Viet
18 Nam—

19 (A) for fiscal year 2002 unless not later
20 than 30 days after the date of the enactment of
21 this Act the President determines and certifies
22 to Congress that the requirements of subpara-
23 graphs (A) through (D) of paragraph (2) have
24 been met during the 12-month period ending on
25 the date of the certification; and

1 (B) for each subsequent fiscal year unless
2 the President determines and certifies to Con-
3 gress in the most recent annual report sub-
4 mitted pursuant to section 241 that the re-
5 quirements of subparagraphs (A) through (D)
6 of paragraph (2) have been met during the 12-
7 month period covered by the report.

8 (2) REQUIREMENTS.—The requirements of this
9 paragraph are that—

10 (A) the Government of Viet Nam has made
11 substantial progress toward releasing all polit-
12 ical and religious prisoners from imprisonment,
13 house arrest, and other forms of detention;

14 (B) the Government of Viet Nam has
15 made substantial progress toward respecting
16 the right to freedom of religion, including the
17 right to participate in religious activities and in-
18 stitutions without interference by or involve-
19 ment of the Government;

20 (C) the Government of Viet Nam has made
21 substantial progress toward respecting the
22 human rights of members of ethnic minority
23 groups in the Central Highlands or elsewhere in
24 Viet Nam; and

1 (D)(i) neither any official of the Govern-
2 ment of Viet Nam nor any agency or entity
3 wholly or partly owned by the Government of
4 Viet Nam was complicit in a severe form of
5 trafficking in persons; or

6 (ii) the Government of Viet Nam took all
7 appropriate steps to end any such complicity
8 and hold such official, agency, or entity fully
9 accountable for its conduct.

10 (b) EXCEPTION.—Subsection (a) shall not apply for
11 any fiscal year with respect to the provision of United
12 States nonhumanitarian assistance for any program or ac-
13 tivity for which such assistance was provided to the Gov-
14 ernment of Viet Nam for fiscal year 2001 in an amount
15 not to exceed the amount so provided for fiscal year 2001.

16 (c) DEFINITIONS.—In this section:

17 (1) SEVERE FORM OF TRAFFICKING IN PER-
18 SONS.—The term “severe form of trafficking in per-
19 sons” means any activity described in section 103(8)
20 of the Trafficking Victims Protection Act of 2000
21 (Public Law 106–386 (114 Stat. 1470); 22 U.S.C.
22 7102(8)).

23 (2) UNITED STATES NONHUMANITARIAN AS-
24 SISTANCE.—The term “United States nonhumani-
25 tarian assistance” means—

1 (A) any assistance under the Foreign As-
2 sistence Act of 1961 (including programs under
3 title IV of chapter 2 of part I of that Act, relat-
4 ing to the Overseas Private Investment Cor-
5 poration), other than—

6 (i) disaster relief assistance, including
7 any assistance under chapter 9 of part I of
8 that Act;

9 (ii) assistance which involves the pro-
10 vision of food (including monetization of
11 food) or medicine; and

12 (iii) assistance for refugees;

13 (B) sales, or financing on any terms, under
14 the Arms Export Control Act; and

15 (C) financing under the Export-Import
16 Bank Act of 1945.

17 **SEC. 202. MULTILATERAL NONHUMANITARIAN ASSIST-**
18 **ANCE.**

19 The Secretary of the Treasury shall instruct the
20 United States Executive Director of each multilateral de-
21 velopment bank and of the International Monetary Fund
22 to use the voice, vote, and influence of the United States
23 to deny any loan or other utilization of the funds of such
24 bank or institution (other than for humanitarian assist-
25 ance) to Viet Nam for fiscal year 2002 and each subse-

1 quent fiscal year unless the President determines and cer-
2 tifies to Congress for such fiscal year that the require-
3 ments of paragraphs (1) through (4) of section 201(a)
4 have been met.

5 **Subtitle B—Assistance to Support**
6 **Democracy in Viet Nam**

7 **SEC. 211. ASSISTANCE.**

8 (a) IN GENERAL.—The President is authorized to
9 provide assistance, through appropriate nongovernmental
10 organizations, for the support of individuals and organiza-
11 tions to promote human rights and nonviolent democratic
12 change in Viet Nam.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the President to carry
15 out subsection (a) \$2,000,000 for each of the fiscal years
16 2002 and 2003.

17 **Subtitle C—United States Public**
18 **Diplomacy**

19 **SEC. 221. RADIO FREE ASIA TRANSMISSIONS TO VIET NAM.**

20 (a) POLICY OF THE UNITED STATES.—It is the pol-
21 icy of the United States to take such measures as are nec-
22 essary to overcome the jamming of Radio Free Asia by
23 the Government of Viet Nam.

24 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
25 tion to such amounts as are otherwise authorized to be

1 appropriated for the Broadcasting Board of Governors,
2 there are authorized to be appropriated to carry out the
3 policy under subsection (a) \$9,100,000 for the fiscal year
4 2002 and \$1,100,000 for the fiscal year 2003.

5 **SEC. 222. UNITED STATES EDUCATIONAL AND CULTURAL**
6 **EXCHANGE PROGRAMS WITH VIET NAM.**

7 It is the policy of the United States that programs
8 of educational and cultural exchange with Viet Nam
9 should actively promote progress toward freedom and de-
10 mocracy in Viet Nam by providing opportunities to Viet-
11 nameese nationals from a wide range of occupations and
12 perspectives to see freedom and democracy in action and,
13 also, by ensuring that Vietnamese nationals who have al-
14 ready demonstrated a commitment to these values are in-
15 cluded in such programs.

16 **Subtitle D—United States Refugee**
17 **Policy**

18 **SEC. 232. REFUGEE RESETTLEMENT FOR NATIONALS OF**
19 **VIET NAM.**

20 (a) POLICY OF THE UNITED STATES.—It is the pol-
21 icy of the United States to offer refugee resettlement to
22 nationals of Viet Nam (including members of the
23 Montagnard ethnic minority groups) who were eligible for
24 the Orderly Departure Program or any other United
25 States refugee program and who were deemed ineligible

1 due to administrative error or who for reasons beyond the
2 control of such individuals (including the inability to pay
3 bribes demanded by officials of the Government of Viet
4 Nam) were unable to apply for such programs in compli-
5 ance with deadlines imposed by the Department of State.

6 (b) AUTHORIZED ACTIVITY.—Of the amounts au-
7 thorized to be appropriated to the Department of State
8 for Migration and Refugee Assistance for each of the fiscal
9 years 2001, 2002, and 2003, such sums as may be nec-
10 essary are authorized to be made available for the protec-
11 tion (including resettlement in appropriate cases) of Viet-
12 namese refugees and asylum seekers, including
13 Montagnards in Cambodia.

14 **Subtitle E—Annual Report on**
15 **Progress Toward Freedom and**
16 **Democracy in Viet Nam**

17 **SEC. 241. ANNUAL REPORT.**

18 Not later than May 31 of each year, the Secretary
19 of State shall submit to Congress a report for the 12-
20 month period ending on the date of submission of the re-
21 port, on the following:

22 (1) The determination and certification of the
23 President that the requirements of subparagraphs
24 (A) through (D) of section 201(a)(2) have been met,
25 if applicable.

1 (2) Efforts by the United States Government to
2 secure transmission sites for Radio Free Asia in
3 countries in close geographical proximity to Viet
4 Nam in accordance with section 221(a).

5 (3) Efforts to ensure that programs with Viet
6 Nam promote the policy set forth in section 222 and
7 with section 102 of the Human Rights, Refugee, and
8 Other Foreign Policy Provisions Act of 1996 regard-
9 ing participation in programs of educational and cul-
10 tural exchange.

11 (4) Steps taken to carry out the policy under
12 section 232(a).

107TH CONGRESS
1ST SESSION

H. R. 2272

To amend the Foreign Assistance Act of 1961 to provide for debt relief to developing countries who take action to protect critical coral reef habitats.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2001

Mr. KIRK (for himself, Mrs. JOHNSON of Connecticut, Mr. CASTLE, Mr. BOEHLERT, Mr. HOBSON, Mrs. KELLY, Mr. MALONEY of Connecticut, Mr. GILMAN, Mr. SMITH of New Jersey, Mr. BOUCHER, Mr. PORTMAN, Mr. FALCOMA, Mr. HASTINGS of Florida, and Mr. GREENWOOD) introduced the following bill; which was referred to the Committee on International Relations

A BILL

To amend the Foreign Assistance Act of 1961 to provide for debt relief to developing countries who take action to protect critical coral reef habitats.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEBT REDUCTION FOR DEVELOPING COUN-**
4 **TRIES WITH CORAL REEFS AND OTHER**
5 **COASTAL MARINE RESOURCES.**

6 The Foreign Assistance Act of 1961 (22 U.S.C. 2151
7 et seq.) is amended by adding at the end the following:

1 **“PART VI—DEBT REDUCTION FOR DEVELOPING**
2 **COUNTRIES WITH CORAL REEFS AND OTHER**
3 **COASTAL MARINE RESOURCES**

4 **“SEC. 901. SHORT TITLE.**

5 “This part may be cited as the ‘Coral Reef and
6 Coastal Marine Conservation Act of 2001’.

7 **“SEC. 902. FINDINGS AND PURPOSES.**

8 “(a) FINDINGS.—The Congress finds the following:

9 “(1) It is the established policy of the United
10 States to support and seek the protection and res-
11 toration of natural coastal marine areas, in par-
12 ticular coral reefs and other critically imperiled
13 coastal marine resources around the world, as dem-
14 onstrated by the establishment of the United States
15 Government’s Coral Reef Task Force under Execu-
16 tive Order 13089 (June 11, 1998) and by the em-
17 phasis given to coral reefs at the Conference on
18 Oceans held in Monterey, California.

19 “(2) Coral reefs and other coastal marine re-
20 sources provide a wide range of benefits to mankind
21 by—

22 “(A) harboring a major share of the
23 world’s marine biological diversity, and by act-
24 ing as seed-grounds and nurseries for many
25 deep-sea species; and

1 “(B) serving as the basis for major activi-
2 ties of critical economic, social, and cultural im-
3 portance, including fishing, pharmaceutical re-
4 search, recreation, tourism, and the natural pu-
5 rification and recharge of waters.

6 “(3) International organizations and assistance
7 programs to conserve coral reefs and other coastal
8 marine resources have proliferated in recent years,
9 but the rapid destruction of these resources nonethe-
10 less continues in many countries.

11 “(4) Poverty and economic pressures on many
12 developing countries, including the burden of official
13 debts, has promoted inefficient, unsustainable over-
14 exploitation of coral reefs and other coastal marine
15 resources, while also denying necessary funds to pro-
16 tection efforts.

17 “(5) Reduction of official, government-to-gov-
18 ernment debts can help reduce economic pressures
19 for over-exploitation of coral reefs and other coastal
20 marine resources and can mobilize additional re-
21 sources for their protection.

22 “(b) PURPOSES.—The purposes of this part are—

23 “(1) to recognize the values received by United
24 States citizens from protection of coral reefs and
25 other coastal marine resources;

1 “(2) to facilitate greater protection of remain-
2 ing coral reefs and other coastal marine resources,
3 and the recovery of damaged areas, by providing for
4 the alleviation of debt in countries where these re-
5 sources are located, thus allowing for the use of ad-
6 ditional resources to protect and restore such coral
7 reefs and other coastal marine resources, and to re-
8 duce economic pressures that have led to
9 unsustainable exploitation; and

10 “(3) to ensure that resources freed from debt in
11 such countries are rechanneled to protection of coral
12 reefs and other coastal marine resources.

13 **“SEC. 903. DEFINITIONS.**

14 “In this part:

15 “(1) ADMINISTERING BODY.—The term ‘admin-
16 istering body’ means the entity provided for in sec-
17 tion 908(e).

18 “(2) APPROPRIATE CONGRESSIONAL COMMIT-
19 TEES.—The term ‘appropriate congressional com-
20 mittees’ means—

21 “(A) the Committee on International Rela-
22 tions and the Committee on Appropriations of
23 the House of Representatives; and

1 “(B) the Committee on Foreign Relations
2 and the Committee on Appropriations of the
3 Senate.

4 “(3) BENEFICIARY COUNTRY.—The term ‘bene-
5 ficiary country’ means an eligible country with re-
6 spect to which the authority of section 906(a) or
7 paragraph (1) or (2) of section 907(a) of this part
8 is exercised.

9 “(4) BOARD.—The term ‘Board’ means the
10 board referred to in section 910.

11 “(5) CORAL.—The term ‘coral’ means species
12 of the phylum Cnidaria, including—

13 “(A) all species of the orders Antipatharia
14 (black corals), Scleractinia (stony corals),
15 Aleyonacea (soft corals), Gorgonacea (horny
16 corals), Stolonifera (organpipe corals and oth-
17 ers), and Coenothecalia (blue coral), of the class
18 Anthozoa; and

19 “(B) all species of the order
20 Hydrocorallina (fire corals and hydrocorals) of
21 the class Hydrozoa.

22 “(6) CORAL REEF.—The term ‘coral reef’
23 means any reef or shoal composed primarily of cor-
24 als.

1 “(7) DEVELOPING COUNTRY WITH A CORAL
2 REEF OR OTHER COASTAL MARINE RESOURCE.—The
3 term ‘developing country with a coral reef or other
4 coastal marine resource’ means—

5 “(A)(i) a country that has a per capita in-
6 come of \$725 or less in 1994 United States dol-
7 lars (commonly referred to as ‘low-income coun-
8 try’), as determined and adjusted on an annual
9 basis by the International Bank for Reconstruc-
10 tion and Development in its World Development
11 Report; or

12 “(ii) a country that has a per capita in-
13 come of more than \$725 but less than \$8,956
14 in 1994 United States dollars (commonly re-
15 ferred to as ‘middle-income country’), as deter-
16 mined and adjusted on an annual basis by the
17 International Bank for Reconstruction and De-
18 velopment in its World Development Report;
19 and

20 “(B) a country that contains at least one
21 coral reef or other coastal marine resource that
22 is of conservation concern.

23 “(8) ELIGIBLE COUNTRY.—The term ‘eligible
24 country’ means a country designated by the Presi-
25 dent in accordance with section 905.

1 “(9) CORAL REEF AND OTHER COASTAL MA-
2 RINE RESOURCES AGREEMENT.—The term ‘Coral
3 Reef and Other Coastal Marine Resources Agree-
4 ment’ or ‘Agreement’ means an Coral Reef and
5 Other Coastal Marine Resources Agreement as pro-
6 vided for in section 908.

7 “(10) CORAL REEF AND OTHER COASTAL MA-
8 RINE RESOURCES FACILITY.—The term ‘Coral Reef
9 and Other Coastal Marine Resources Facility’ or
10 ‘Facility’ means the Coral Reef and Other Coastal
11 Marine Resources Facility established in the Depart-
12 ment of the Treasury by section 904.

13 “(11) CORAL REEF AND OTHER COASTAL MA-
14 RINE RESOURCES FUND.—The term ‘Coral Reef and
15 Other Coastal Marine Resources Fund’ or ‘Fund’
16 means a Coral Reef and Other Coastal Marine Re-
17 sources Fund provided for in section 909.

18 **“SEC. 904. ESTABLISHMENT OF THE FACILITY.**

19 There is established in the Department of the Treas-
20 ury an entity to be known as the ‘Coral Reef and Other
21 Coastal Marine Resources Facility’ for the purpose of pro-
22 viding for the administration of debt reduction in accord-
23 ance with this part.

1 **“SEC. 905. ELIGIBILITY FOR BENEFITS.**

2 “(a) IN GENERAL.—To be eligible for benefits from
3 the Facility under this part, a country shall be a devel-
4 oping country with a coral reef or other coastal marine
5 resource—

6 “(1) the government of which meets the re-
7 quirements applicable to Latin American or Carib-
8 bean countries under paragraphs (1) through (5)
9 and (7) of section 703(a) of this Act; and

10 “(2) that has established investment reforms,
11 as evidenced by the conclusion of a bilateral invest-
12 ment treaty with the United States, implementation
13 of an investment sector loan with the Inter-Amer-
14 ican Development Bank, World Bank-supported in-
15 vestment reforms, or other measures, as appropriate.

16 “(b) ELIGIBILITY DETERMINATIONS.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), the President shall, consistent with sub-
19 section (a), determine whether a country is eligible
20 to receive benefits under this part.

21 “(2) WAIVER.—The President may waive one
22 or more of the requirements referred to in sub-
23 section (a) or section 903(7)(A) with respect to a de-
24 termination of eligibility of a country to receive ben-
25 efits under this part if the President determines that

1 it is in the national interests of the United States
2 to do so.

3 “(3) CONGRESSIONAL NOTIFICATION.—The
4 President shall notify the appropriate congressional
5 committees of the intention of the President to des-
6 ignate a country as an eligible country, including a
7 notification of the intention of the President to
8 waive one or more of the eligibility requirements
9 with respect to a country pursuant to paragraph (2),
10 at least 15 days in advance of any formal determina-
11 tion.

12 **“SEC. 906. REDUCTION OF DEBT OWED TO THE UNITED**
13 **STATES AS A RESULT OF CONCESSIONAL**
14 **LOANS UNDER THIS ACT.**

15 “(a) AUTHORITY TO REDUCE DEBT.—

16 “(1) AUTHORITY.—The President may reduce
17 the amount owed to the United States (or any agen-
18 cy of the United States) that is outstanding as of
19 January 1, 1999, as a result of concessional loans
20 made to an eligible country by the United States
21 under this Act or predecessor foreign economic as-
22 sistance legislation.

23 “(2) AUTHORIZATION OF APPROPRIATIONS.—
24 For the cost (as defined in section 502(5) of the
25 Federal Credit Reform Act of 1990) for the reduc-

1 tion of any debt pursuant to this section, there are
2 authorized to be appropriated to the President such
3 sums as may be necessary for each of the fiscal
4 years 2002 through 2005.

5 “(3) CERTAIN PROHIBITIONS INAPPLICABLE.—

6 “(A) IN GENERAL.—A reduction of debt
7 pursuant to this section shall not be considered
8 assistance for purposes of any provision of law
9 limiting assistance to a country.

10 “(B) ADDITIONAL REQUIREMENT.—The
11 authority of this section may be exercised not-
12 withstanding section 620(r) of this Act or sec-
13 tion 321 of the International Development and
14 Food Assistance Act of 1975.

15 “(b) IMPLEMENTATION OF DEBT REDUCTION.—

16 “(1) IN GENERAL.—Any debt reduction pursu-
17 ant to subsection (a) shall be accomplished at the di-
18 rection of the Facility by the exchange of a new obli-
19 gation for obligations of the type referred to in sub-
20 section (a) outstanding as of the date specified in
21 subsection (a)(1).

22 “(2) EXCHANGE OF OBLIGATIONS.—

23 “(A) IN GENERAL.—The Facility shall no-
24 tify the agency primarily responsible for admin-
25 istering part I of this Act of an agreement en-

1 tered into under paragraph (1) with an eligible
2 country to exchange a new obligation for out-
3 standing obligations.

4 “(B) ADDITIONAL REQUIREMENT.—At the
5 direction of the Facility, the old obligations that
6 are the subject of the agreement shall be can-
7 celed and a new debt obligation for the country
8 shall be established relating to the agreement,
9 and the agency primarily responsible for admin-
10 istering part I of this Act shall make an adjust-
11 ment in its accounts to reflect the debt reduc-
12 tion.

13 “(c) ADDITIONAL TERMS AND CONDITIONS.—The
14 following additional terms and conditions shall apply to
15 the reduction of debt under subsection (a)(1) in the same
16 manner as such terms and conditions apply to the reduc-
17 tion of debt under section 704(a)(1) of this Act:

18 “(1) The provisions relating to repayment of
19 principal under section 705 of this Act.

20 “(2) The provisions relating to interest on new
21 obligations under section 706 of this Act.

22 **“SEC. 907. AUTHORITY TO ENGAGE IN DEBT-FOR-NATURE**
23 **SWAPS AND DEBT BUYBACKS.**

24 “(a) LOANS AND CREDITS ELIGIBLE FOR SALE, RE-
25 DUCTION, OR CANCELLATION.—

1 “(1) DEBT-FOR-NATURE SWAPS.—

2 “(A) IN GENERAL.—Notwithstanding any
3 other provision of law, the President may, in
4 accordance with this section, sell to any eligible
5 purchaser described in subparagraph (B) any
6 concessional loans described in section
7 906(a)(1), or on receipt of payment from an eli-
8 gible purchaser described in subparagraph (B),
9 reduce or cancel such loans or portion thereof,
10 only for the purpose of facilitating a debt-for-
11 nature swap to support eligible activities de-
12 scribed in section 908(d).

13 “(B) ELIGIBLE PURCHASER DESCRIBED.—
14 A loan may be sold, reduced, or canceled under
15 subparagraph (A) only to a purchaser who pre-
16 sents plans satisfactory to the President for
17 using the loan for the purpose of engaging in
18 debt-for-nature swaps to support eligible activi-
19 ties described in section 908(d).

20 “(C) CONSULTATION REQUIREMENT.—Be-
21 fore the sale under subparagraph (A) to any eli-
22 gible purchaser described in subparagraph (B),
23 or any reduction or cancellation under such
24 subparagraph (A), of any loan made to an eligi-
25 ble country, the President shall consult with the

1 country concerning the amount of loans to be
2 sold, reduced, or canceled and their uses for
3 debt-for-nature swaps to support eligible activi-
4 ties described in section 908(d).

5 “(D) AUTHORIZATION OF APPROPRIA-
6 TIONS.—For the cost (as defined in section
7 502(5) of the Federal Credit Reform Act of
8 1990) for the reduction of any debt pursuant to
9 subparagraph (A), amounts authorized to be
10 appropriated under section 906(a)(2) shall be
11 made available for such reduction of debt pur-
12 suant to subparagraph (A).

13 “(2) DEBT BUYBACKS.—Notwithstanding any
14 other provision of law, the President may, in accord-
15 ance with this section, sell to any eligible country
16 any concessional loans described in section
17 906(a)(1), or on receipt of payment from an eligible
18 purchaser described in paragraph (1)(B), reduce or
19 cancel such loans or portion thereof, only for the
20 purpose of facilitating a debt buyback by an eligible
21 country of its own qualified debt, only if the eligible
22 country uses an additional amount of the local cur-
23 rency of the eligible country, equal to not less than
24 the lessor of 40 percent of the price paid for such
25 debt by such eligible country, or the difference be-

1 tween the price paid for such debt and the face value
2 of such debt, to support eligible activities described
3 in section 908(d).

4 “(3) LIMITATION.—The authority provided by
5 paragraphs (1) and (2) shall be available only to the
6 extent that appropriations for the cost (as defined in
7 section 502(5) of the Federal Credit Reform Act of
8 1990) of the modification of any debt pursuant to
9 such paragraphs are made in advance.

10 “(4) TERMS AND CONDITIONS.—Notwith-
11 standing any other provision of law, the President
12 shall, in accordance with this section, establish the
13 terms and conditions under which loans may be sold,
14 reduced, or canceled pursuant to this section.

15 “(5) ADMINISTRATION.—

16 “(A) IN GENERAL.—The Facility shall no-
17 tify the administrator of the agency primarily
18 responsible for administering part I of this Act
19 of eligible purchasers described in paragraph
20 (1)(B) that the President has determined to be
21 eligible under paragraph (1), and shall direct
22 such agency to carry out the sale, reduction, or
23 cancellation of a loan pursuant to such para-
24 graph.

1 “(B) ADDITIONAL REQUIREMENT.—Such
2 agency shall make an adjustment in its ac-
3 counts to reflect the sale, reduction, or cancella-
4 tion of such a loan.

5 “(b) DEPOSIT OF PROCEEDS.—The proceeds from
6 the sale, reduction, or cancellation of any loan sold, re-
7 duced or canceled pursuant to this section shall be depos-
8 ited in the United States Government account or accounts
9 established for the repayment of such loan.

10 **“SEC. 908. CORAL REEF AND OTHER COASTAL MARINE RE-**
11 **SOURCES AGREEMENT.**

12 “(a) AUTHORITY.—

13 “(1) IN GENERAL.—The Secretary of State is
14 authorized, in consultation with other appropriate
15 officials of the Federal Government, to enter into a
16 Coral Reef and Other Coastal Marine Resources
17 Agreement with any eligible country concerning the
18 operation and use of the Fund for that country.

19 “(2) CONSULTATION.—In the negotiation of
20 such an Agreement, the Secretary shall consult with
21 the Board in accordance with section 910.

22 “(b) CONTENTS OF AGREEMENT.—The requirements
23 contained in section 708(b) of this Act (relating to con-
24 tents of an agreement) shall apply to an Agreement in

1 the same manner as such requirements apply to an Amer-
2 icas Framework Agreement.

3 “(c) ADMINISTERING BODY.—

4 “(1) IN GENERAL.—Amounts disbursed from
5 the Fund in each beneficiary country shall be admin-
6 istered by a body constituted under the laws of that
7 country.

8 “(2) COMPOSITION.—

9 “(A) IN GENERAL.—The administering
10 body shall consist of—

11 “(i) one or more individuals appointed
12 by the United States Government;

13 “(ii) one or more individuals ap-
14 pointed by the government of the bene-
15 ficiary country; and

16 “(iii) individuals who represent a
17 broad range of—

18 “(I) environmental non-govern-
19 mental organizations of, or active in,
20 the beneficiary country;

21 “(II) local community develop-
22 ment non-governmental organizations
23 of the beneficiary country; and

1 “(III) scientific, academic, or for-
2 estry organizations of the beneficiary
3 country.

4 “(B) ADDITIONAL REQUIREMENT.—A ma-
5 jority of the members of the administering body
6 shall be individuals described in subparagraph
7 (A)(iii).

8 “(3) RESPONSIBILITIES.—The requirements
9 contained in section 708(c)(3) of this Act (relating
10 to responsibilities of the administering body) shall
11 apply to an administering body described in para-
12 graph (1) in the same manner as such requirements
13 apply to an administering body described in section
14 708(c)(1) of this Act.

15 “(d) ELIGIBLE ACTIVITIES.—Amounts deposited in a
16 Fund shall be used only to provide grants to conserve,
17 maintain, and restore the coral reefs and other coastal ma-
18 rine resources in the beneficiary country, through one or
19 more of the following activities:

20 “(1) Establishment, restoration, protection, and
21 maintenance of parks, protected areas, and reserves.

22 “(2) Development and implementation of sci-
23 entifically sound systems of natural resource man-
24 agement, including ‘ridgeline to reef’ and ecosystem
25 management practices.

1 “(3) Training programs to increase the sci-
2 entific, technical, and managerial capacities of indi-
3 viduals and organizations involved in conservation
4 efforts.

5 “(4) Restoration, protection, or sustainable use
6 of diverse marine animal and plant species.

7 “(5) Development and support of the livelihoods
8 of individuals living near a coral reef or other coast-
9 al marine resource, in a manner consistent with pro-
10 tecting those resources.

11 “(e) GRANT RECIPIENTS.—

12 “(1) IN GENERAL.—Grants made from a Fund
13 shall be made to—

14 “(A) nongovernmental environmental, for-
15 estry, conservation, and indigenous peoples or-
16 ganizations of, or active in, the beneficiary
17 country;

18 “(B) other appropriate local or regional
19 entities of, or active in, the beneficiary country;
20 or

21 “(C) in exceptional circumstances, the gov-
22 ernment of the beneficiary country.

23 “(2) PRIORITY.—In providing grants under
24 paragraph (1), priority shall be given to projects
25 that are run by nongovernmental organizations and

1 other private entities and that involve local commu-
2 nities in their planning and execution.

3 “(f) REVIEW OF LARGER GRANTS.—Any grant of
4 more than \$100,000 from a Fund shall be subject to veto
5 by 1 or more of the individuals appointed by the Govern-
6 ment of the United States, or by 1 or more of the individ-
7 uals appointed by the government of the beneficiary coun-
8 try, serving on the administering body of the Fund.

9 “(g) ELIGIBILITY CRITERIA.—In the event that a
10 country ceases to meet the eligibility requirements set
11 forth in section 905(a), as determined by the President
12 pursuant to section 905(b), then grants from the Fund
13 for that country may only be made to nongovernmental
14 organizations until such time as the President determines
15 that such country meets the eligibility requirements set
16 forth in section 905(a).

17 **“SEC. 909. CORAL REEF AND OTHER COASTAL MARINE RE-**
18 **SOURCES FUND.**

19 “(a) ESTABLISHMENT.—Each beneficiary country
20 that enters into a Coral Reef and Other Coastal Marine
21 Resources Agreement under section 908 shall be required
22 to establish a Coral Reef and Other Coastal Marine Re-
23 sources Fund to receive payments of interest on new obli-
24 gations undertaken by the beneficiary country under this
25 part.

1 “(b) REQUIREMENTS RELATING TO OPERATION OF
2 FUND.—The following terms and conditions shall apply
3 to the Fund in the same manner as such terms as condi-
4 tions apply to an Enterprise for the Americas Fund under
5 section 707 of this Act:

6 “(1) The provision relating to deposits under
7 subsection (b) of such section.

8 “(2) The provision relating to investments
9 under subsection (c) of such section.

10 “(3) The provision relating to disbursements
11 under subsection (d) of such section.

12 **“SEC. 910. BOARD.**

13 “(a) ENTERPRISE FOR THE AMERICAS BOARD.—The
14 Enterprise for the Americas Board established under sec-
15 tion 610(a) of the Agricultural Trade Development and
16 Assistance Act of 1954 (7 U.S.C. 1738i(a)) shall, in addi-
17 tion to carrying out the responsibilities of the Board under
18 section 610(c) of such Act, carry out the duties described
19 in subsection (c) of this section for the purposes of this
20 part.

21 “(b) ADDITIONAL MEMBERSHIP.—

22 “(1) IN GENERAL.—The Enterprise for the
23 Americas Board shall be composed of an additional
24 four members appointed by the President as follows:

1 “(A) Two representatives from the United
2 States Government, including a representative
3 of the National Oceanographic and Atmospheric
4 Administration (NOAA) and a representative of
5 the United States Geological Survey (USGS).

6 “(B) Two representatives from private
7 nongovernmental environmental, scientific, for-
8 estry, or academic organizations with experience
9 and expertise in preservation, maintenance, sus-
10 tainable uses, and restoration of coral reefs and
11 other coastal marine resources.

12 “(2) CHAIRPERSON.—Notwithstanding section
13 610(b)(2) of the Agricultural Trade Development
14 and Assistance Act of 1954 (7 U.S.C. 1738i(b)(2)),
15 the Enterprise for the Americas Board shall be
16 headed by a chairperson who shall be appointed by
17 the President from among the representatives ap-
18 pointed under section 610(b)(1)(A) of such Act or
19 paragraph (1)(A) of this subsection.

20 “(c) DUTIES.—The duties described in this sub-
21 section are as follows:

22 “(1) Advise the Secretary of State on the nego-
23 tiations of Coral Reef and Other Coastal Marine Re-
24 sources Agreements.

25 “(2) Ensure, in consultation with—

1 “(A) the government of the beneficiary
2 country;

3 “(B) nongovernmental organizations of the
4 beneficiary country;

5 “(C) nongovernmental organizations of the
6 region (if appropriate);

7 “(D) environmental, scientific, oceano-
8 graphic, and academic leaders of the beneficiary
9 country; and

10 “(E) environmental, scientific, oceano-
11 graphic, and academic leaders of the region (as
12 appropriate),

13 that a suitable administering body is identified for
14 each Fund.

15 “(3) Review the programs, operations, and fis-
16 cal audits of each administering body.

17 **“SEC. 911. CONSULTATIONS WITH THE CONGRESS.**

18 “The President shall consult with the appropriate
19 congressional committees on a periodic basis to review the
20 operation of the Facility under this part and the eligibility
21 of countries for benefits from the Facility under this part.

22 **“SEC. 912. ANNUAL REPORTS TO THE CONGRESS.**

23 “(a) IN GENERAL.—Not later than December 31 of
24 each year, the President shall prepare and transmit to the
25 Congress an annual report concerning the operation of the

1 Facility for the prior fiscal year. Such report shall
2 include—

3 “(1) a description of the activities undertaken
4 by the Facility during the previous fiscal year;

5 “(2) a description of any Agreement entered
6 into under this part;

7 “(3) a report on any Funds that have been es-
8 tablished under this part and on the operations of
9 such Funds; and

10 “(4) a description of any grants that have been
11 provided by administering bodies pursuant to Agree-
12 ments under this part.

13 “(b) SUPPLEMENTAL VIEWS IN ANNUAL REPORT.—

14 Not later than December 15 of each year, each member
15 of the Board shall be entitled to receive a copy of the re-
16 port required under subsection (a). Each member of the
17 Board may prepare and submit supplemental views to the
18 President on the implementation of this part by December
19 31 for inclusion in the annual report when it is trans-
20 mitted to Congress pursuant to this section.”.

Æ

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2272
OFFERED BY MR. HYDE**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. DEBT REDUCTION FOR DEVELOPING COUN-**
2 **TRIES WITH CORAL REEFS AND OTHER**
3 **COASTAL MARINE RESOURCES.**

4 The Foreign Assistance Act of 1961 (22 U.S.C. 2151
5 et seq.) is amended by adding at the end the following:

6 **“PART VI—DEBT REDUCTION FOR DEVELOPING**
7 **COUNTRIES WITH CORAL REEFS AND OTHER**
8 **COASTAL MARINE RESOURCES**

9 **“SEC. 901. SHORT TITLE.**

10 “This part may be cited as the ‘Coral Reef and
11 Coastal Marine Conservation Act of 2001’.

12 **“SEC. 902. FINDINGS AND PURPOSES.**

13 “(a) FINDINGS.—The Congress finds the following:

14 “(1) It is the established policy of the United
15 States to support and seek the protection and res-
16 toration of natural coastal marine areas, in par-
17 ticular coral reefs and other critically imperiled
18 coastal marine resources around the world, as dem-
19 onstrated by the establishment of the United States

1 Government's Coral Reef Task Force under Execu-
2 tive Order 13089 (June 11, 1998) and by the em-
3 phasis given to coral reefs at the Conference on
4 Oceans held in Monterey, California.

5 “(2) Coral reefs and other coastal marine re-
6 sources provide a wide range of benefits to mankind
7 by—

8 “(A) harboring a major share of the
9 world's marine biological diversity, and by act-
10 ing as seed-grounds and nurseries for many
11 deep-sea species; and

12 “(B) serving as the basis for major activi-
13 ties of critical economic, social, and cultural im-
14 portance, including fishing, pharmaceutical re-
15 search, recreation, tourism, and the natural pu-
16 rification and recharge of waters.

17 “(3) International organizations and assistance
18 programs to conserve coral reefs and other coastal
19 marine resources have proliferated in recent years,
20 but the rapid destruction of these resources nonethe-
21 less continues in many countries.

22 “(4) Poverty and economic pressures on many
23 developing countries, including the burden of official
24 debts, has promoted inefficient, unsustainable over-
25 exploitation of coral reefs and other coastal marine

1 resources, while also denying necessary funds to pro-
2 tection efforts.

3 “(5) Reduction of official, government-to-gov-
4 ernment debts can help reduce economic pressures
5 for over-exploitation of coral reefs and other coastal
6 marine resources and can mobilize additional re-
7 sources for their protection.

8 “(b) PURPOSES.—The purposes of this part are—

9 “(1) to recognize the values received by United
10 States citizens from protection of coral reefs and
11 other coastal marine resources;

12 “(2) to facilitate greater protection of remain-
13 ing coral reefs and other coastal marine resources,
14 and the recovery of damaged areas, by providing for
15 the alleviation of debt in countries where these re-
16 sources are located, thus allowing for the use of ad-
17 ditional resources to protect and restore such coral
18 reefs and other coastal marine resources, and to re-
19 duce economic pressures that have led to
20 unsustainable exploitation; and

21 “(3) to ensure that resources freed from debt in
22 such countries are rechanneled to protection of coral
23 reefs and other coastal marine resources.

24 **“SEC. 903. DEFINITIONS.**

25 “In this part:

1 “(1) ADMINISTERING BODY.—The term ‘admin-
2 istering body’ means the entity provided for in sec-
3 tion 908(c).

4 “(2) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term ‘appropriate congressional com-
6 mittees’ means—

7 “(A) the Committee on International Rela-
8 tions and the Committee on Appropriations of
9 the House of Representatives; and

10 “(B) the Committee on Foreign Relations
11 and the Committee on Appropriations of the
12 Senate.

13 “(3) BENEFICIARY COUNTRY.—The term ‘bene-
14 ficiary country’ means an eligible country with re-
15 spect to which the authority of section 906(a) or
16 paragraph (1) or (2) of section 907(a) of this part
17 is exercised.

18 “(4) BOARD.—The term ‘Board’ means the
19 board referred to in section 910.

20 “(5) CORAL.—The term ‘coral’ means species
21 of the phylum Cnidaria, including—

22 “(A) all species of the orders Antipatharia
23 (black corals), Scleractinia (stony corals),
24 Acyonacea (soft corals), Gorgonacea (horny
25 corals), Stolonifera (organpipe corals and oth-

1 ers), and Coenothecalia (blue coral), of the class
2 Anthozoa; and

3 “(B) all species of the order
4 Hydrocorallina (fire corals and hydrocorals) of
5 the class Hydrozoa.

6 “(6) CORAL REEF.—The term ‘coral reef’
7 means any reef or shoal composed primarily of cor-
8 als.

9 “(7) DEVELOPING COUNTRY WITH A CORAL
10 REEF OR OTHER COASTAL MARINE RESOURCE.—The
11 term ‘developing country with a coral reef or other
12 coastal marine resource’ means—

13 “(A)(i) a country that has a per capita in-
14 come of \$725 or less in 1994 United States dol-
15 lars (commonly referred to as ‘low-income coun-
16 try’), as determined and adjusted on an annual
17 basis by the International Bank for Reconstruc-
18 tion and Development in its World Development
19 Report; or

20 “(ii) a country that has a per capita in-
21 come of more than \$725 but less than \$8,956
22 in 1994 United States dollars (commonly re-
23 ferred to as ‘middle-income country’), as deter-
24 mined and adjusted on an annual basis by the
25 International Bank for Reconstruction and De-

1 velopment in its World Development Report;
2 and

3 “(B) a country that contains at least one
4 coral reef or other coastal marine resource that
5 is of conservation concern.

6 “(8) ELIGIBLE COUNTRY.—The term ‘eligible
7 country’ means a country designated by the Presi-
8 dent in accordance with section 905.

9 “(9) CORAL REEF AND OTHER COASTAL MA-
10 RINE RESOURCES AGREEMENT.—The term ‘Coral
11 Reef and Other Coastal Marine Resources Agree-
12 ment’ or ‘Agreement’ means an Coral Reef and
13 Other Coastal Marine Resources Agreement as pro-
14 vided for in section 908.

15 “(10) CORAL REEF AND OTHER COASTAL MA-
16 RINE RESOURCES FACILITY.—The term ‘Coral Reef
17 and Other Coastal Marine Resources Facility’ or
18 ‘Facility’ means the Coral Reef and Other Coastal
19 Marine Resources Facility established in the Depart-
20 ment of the Treasury by section 904.

21 “(11) CORAL REEF AND OTHER COASTAL MA-
22 RINE RESOURCES FUND.—The term ‘Coral Reef and
23 Other Coastal Marine Resources Fund’ or ‘Fund’
24 means a Coral Reef and Other Coastal Marine Re-
25 sources Fund provided for in section 909.

1 **“SEC. 904. ESTABLISHMENT OF THE FACILITY.**

2 There is established in the Department of the Treas-
3 ury an entity to be known as the ‘Coral Reef and Other
4 Coastal Marine Resources Facility’ for the purpose of pro-
5 viding for the administration of debt reduction in accord-
6 ance with this part.

7 **“SEC. 905. ELIGIBILITY FOR BENEFITS.**

8 “(a) IN GENERAL.—To be eligible for benefits from
9 the Facility under this part, a country shall be a devel-
10 oping country with a coral reef or other coastal marine
11 resource—

12 “(1) the government of which meets the re-
13 quirements applicable to Latin American or Carib-
14 bean countries under paragraphs (1) through (5)
15 and (7) of section 703(a) of this Act; and

16 “(2) that has established investment reforms,
17 as evidenced by the conclusion of a bilateral invest-
18 ment treaty with the United States, implementation
19 of an investment sector loan with the Inter-Amer-
20 ican Development Bank, World Bank-supported in-
21 vestment reforms, or other measures, as appropriate.

22 “(b) ELIGIBILITY DETERMINATIONS.—

23 “(1) IN GENERAL.—Consistent with subsection
24 (a), the President shall determine whether a country
25 is eligible to receive benefits under this part.

1 “(2) CONGRESSIONAL NOTIFICATION.—The
2 President shall notify the appropriate congressional
3 committees of the intention of the President to des-
4 ignate a country as an eligible country at least 15
5 days in advance of any formal determination.

6 **“SEC. 906. REDUCTION OF DEBT OWED TO THE UNITED**
7 **STATES AS A RESULT OF CONCESSIONAL**
8 **LOANS UNDER THIS ACT.**

9 “(a) AUTHORITY TO REDUCE DEBT.—

10 “(1) AUTHORITY.—The President may reduce
11 the amount owed to the United States (or any agen-
12 cy of the United States) that is outstanding as of
13 January 1, 1999, as a result of concessional loans
14 made to an eligible country by the United States
15 under this Act or predecessor foreign economic as-
16 sistance legislation.

17 “(2) AUTHORIZATION OF APPROPRIATIONS.—
18 For the cost (as defined in section 502(5) of the
19 Federal Credit Reform Act of 1990) for the reduc-
20 tion of any debt pursuant to this section, there are
21 authorized to be appropriated to the President
22 \$10,000,000 for each of the fiscal years 2002
23 through 2005.

24 “(3) CERTAIN PROHIBITIONS INAPPLICABLE.—

1 “(A) IN GENERAL.—A reduction of debt
2 pursuant to this section shall not be considered
3 assistance for purposes of any provision of law
4 limiting assistance to a country.

5 “(B) ADDITIONAL REQUIREMENT.—The
6 authority of this section may be exercised not-
7 withstanding section 620(r) of this Act or sec-
8 tion 321 of the International Development and
9 Food Assistance Act of 1975.

10 “(b) IMPLEMENTATION OF DEBT REDUCTION.—

11 “(1) IN GENERAL.—Any debt reduction pursu-
12 ant to subsection (a) shall be accomplished at the di-
13 rection of the Facility by the exchange of a new obli-
14 gation for obligations of the type referred to in sub-
15 section (a) outstanding as of the date specified in
16 subsection (a)(1).

17 “(2) EXCHANGE OF OBLIGATIONS.—

18 “(A) IN GENERAL.—The Facility shall no-
19 tify the United States Agency for International
20 Development of an agreement entered into
21 under paragraph (1) with an eligible country to
22 exchange a new obligation for outstanding obli-
23 gations.

24 “(B) ADDITIONAL REQUIREMENT.—At the
25 direction of the Facility, the old obligations that

1 are the subject of the agreement shall be can-
2 celed and a new debt obligation for the country
3 shall be established relating to the agreement,
4 and the United States Agency for International
5 Development shall make an adjustment in its
6 accounts to reflect the debt reduction.

7 “(c) ADDITIONAL TERMS AND CONDITIONS.—The
8 following additional terms and conditions shall apply to
9 the reduction of debt under subsection (a)(1) in the same
10 manner as such terms and conditions apply to the reduc-
11 tion of debt under section 704(a)(1) of this Act:

12 “(1) The provisions relating to repayment of
13 principal under section 705 of this Act.

14 “(2) The provisions relating to interest on new
15 obligations under section 706 of this Act.

16 **“SEC. 907. AUTHORITY TO ENGAGE IN DEBT-FOR-NATURE**
17 **SWAPS AND DEBT BUYBACKS.**

18 “(a) LOANS AND CREDITS ELIGIBLE FOR SALE, RE-
19 DUCTION, OR CANCELLATION.—

20 “(1) DEBT-FOR-NATURE SWAPS.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of law, the President may, in
23 accordance with this section, sell to any eligible
24 purchaser described in subparagraph (B) any
25 concessional loans described in section

1 906(a)(1), or on receipt of payment from an eli-
2 gible purchaser described in subparagraph (B),
3 reduce or cancel such loans or portion thereof,
4 only for the purpose of facilitating a debt-for-
5 nature swap to support eligible activities de-
6 scribed in section 908(d).

7 “(B) ELIGIBLE PURCHASER DESCRIBED.—
8 A loan may be sold, reduced, or canceled under
9 subparagraph (A) only to a purchaser who pre-
10 sents plans satisfactory to the President for
11 using the loan for the purpose of engaging in
12 debt-for-nature swaps to support eligible activi-
13 ties described in section 908(d).

14 “(C) CONSULTATION REQUIREMENT.—Be-
15 fore the sale under subparagraph (A) to any eli-
16 gible purchaser described in subparagraph (B),
17 or any reduction or cancellation under such
18 subparagraph (A), of any loan made to an eligi-
19 ble country, the President shall consult with the
20 country concerning the amount of loans to be
21 sold, reduced, or canceled and their uses for
22 debt-for-nature swaps to support eligible activi-
23 ties described in section 908(d).

24 “(D) AUTHORIZATION OF APPROPRIA-
25 TIONS.—For the cost (as defined in section

1 502(5) of the Federal Credit Reform Act of
2 1990) for the reduction of any debt pursuant to
3 subparagraph (A), amounts authorized to be
4 appropriated under section 906(a)(2) shall be
5 made available for such reduction of debt pur-
6 suant to subparagraph (A).

7 “(2) DEBT BUYBACKS.—Notwithstanding any
8 other provision of law, the President may, in accord-
9 ance with this section, sell to any eligible country
10 any concessional loans described in section
11 906(a)(1), or on receipt of payment from an eligible
12 purchaser described in paragraph (1)(B), reduce or
13 cancel such loans or portion thereof, only for the
14 purpose of facilitating a debt buyback by an eligible
15 country of its own qualified debt, only if the eligible
16 country uses an additional amount of the local cur-
17 rency of the eligible country, equal to not less than
18 the lessor of 40 percent of the price paid for such
19 debt by such eligible country, or the difference be-
20 tween the price paid for such debt and the face value
21 of such debt, to support eligible activities described
22 in section 908(d).

23 “(3) LIMITATION.—The authority provided by
24 paragraphs (1) and (2) shall be available only to the
25 extent that appropriations for the cost (as defined in

1 section 502(5) of the Federal Credit Reform Act of
2 1990) of the modification of any debt pursuant to
3 such paragraphs are made in advance.

4 “(4) TERMS AND CONDITIONS.—Notwith-
5 standing any other provision of law, the President
6 shall, in accordance with this section, establish the
7 terms and conditions under which loans may be sold,
8 reduced, or canceled pursuant to this section.

9 “(5) ADMINISTRATION.—

10 “(A) IN GENERAL.—The Facility shall no-
11 tify the Administrator of the United States
12 Agency for International Development of eligi-
13 ble purchasers described in paragraph (1)(B)
14 that the President has determined to be eligible
15 under paragraph (1), and shall direct such
16 agency to carry out the sale, reduction, or can-
17 cellation of a loan pursuant to such paragraph.

18 “(B) ADDITIONAL REQUIREMENT.—Such
19 agency shall make an adjustment in its ac-
20 counts to reflect the sale, reduction, or cancella-
21 tion of such a loan.

22 “(b) DEPOSIT OF PROCEEDS.—The proceeds from
23 the sale, reduction, or cancellation of any loan sold, re-
24 duced or canceled pursuant to this section shall be depos-

1 ited in the United States Government account or accounts
2 established for the repayment of such loan.

3 **“SEC. 908. CORAL REEF AND OTHER COASTAL MARINE RE-**
4 **SOURCES AGREEMENT.**

5 “(a) AUTHORITY.—

6 “(1) IN GENERAL.—The Secretary of State is
7 authorized, in consultation with other appropriate
8 officials of the Federal Government, to enter into a
9 Coral Reef and Other Coastal Marine Resources
10 Agreement with any eligible country concerning the
11 operation and use of the Fund for that country.

12 “(2) CONSULTATION.—In the negotiation of
13 such an Agreement, the Secretary shall consult with
14 the Board in accordance with section 910.

15 “(b) CONTENTS OF AGREEMENT.—The requirements
16 contained in section 708(b) of this Act (relating to con-
17 tents of an agreement) shall apply to an Agreement in
18 the same manner as such requirements apply to an Amer-
19 icas Framework Agreement.

20 “(c) ADMINISTERING BODY.—

21 “(1) IN GENERAL.—Amounts disbursed from
22 the Fund in each beneficiary country shall be admin-
23 istered by a body constituted under the laws of that
24 country.

25 “(2) COMPOSITION.—

15

1 “(A) IN GENERAL.—The administering
2 body shall consist of—

3 “(i) one or more individuals appointed
4 by the United States Government;

5 “(ii) one or more individuals ap-
6 pointed by the government of the bene-
7 ficiary country; and

8 “(iii) individuals who represent a
9 broad range of—

10 “(I) environmental non-govern-
11 mental organizations of, or active in,
12 the beneficiary country;

13 “(II) local community develop-
14 ment non-governmental organizations
15 of the beneficiary country; and

16 “(III) scientific, academic, or for-
17 estry organizations of the beneficiary
18 country.

19 “(B) ADDITIONAL REQUIREMENT.—A ma-
20 jority of the members of the administering body
21 shall be individuals described in subparagraph
22 (A)(iii).

23 “(3) RESPONSIBILITIES.—The requirements
24 contained in section 708(c)(3) of this Act (relating
25 to responsibilities of the administering body) shall

1 apply to an administering body described in para-
2 graph (1) in the same manner as such requirements
3 apply to an administering body described in section
4 708(c)(1) of this Act.

5 “(d) ELIGIBLE ACTIVITIES.—Amounts deposited in a
6 Fund shall be used only to provide grants to conserve,
7 maintain, and restore the coral reefs and other coastal ma-
8 rine resources in the beneficiary country, through one or
9 more of the following activities:

10 “(1) Establishment, restoration, protection, and
11 maintenance of parks, protected areas, and reserves.

12 “(2) Development and implementation of sci-
13 entifically sound systems of natural resource man-
14 agement, including ‘ridgeline to reef’ and ecosystem
15 management practices.

16 “(3) Training programs to increase the sci-
17 entific, technical, and managerial capacities of indi-
18 viduals and organizations involved in conservation
19 efforts.

20 “(4) Restoration, protection, or sustainable use
21 of diverse marine animal and plant species.

22 “(5) Development and support of the livelihoods
23 of individuals living near a coral reef or other coast-
24 al marine resource, in a manner consistent with pro-
25 tecting those resources.

1 “(e) GRANT RECIPIENTS.—

2 “(1) IN GENERAL.—Grants made from a Fund
3 shall be made to—

4 “(A) nongovernmental environmental, for-
5 estry, conservation, and indigenous peoples or-
6 ganizations of, or active in, the beneficiary
7 country;

8 “(B) other appropriate local or regional
9 entities of, or active in, the beneficiary country;

10 or

11 “(C) in exceptional circumstances, the gov-
12 ernment of the beneficiary country.

13 “(2) PRIORITY.—In providing grants under
14 paragraph (1), priority shall be given to projects
15 that are run by nongovernmental organizations and
16 other private entities and that involve local commu-
17 nities in their planning and execution.

18 “(f) REVIEW OF LARGER GRANTS.—Any grant of
19 more than \$100,000 from a Fund shall be subject to veto
20 by the Government of the United States or the govern-
21 ment of the beneficiary country.

22 “(g) ELIGIBILITY CRITERIA.—In the event that a
23 country ceases to meet the eligibility requirements set
24 forth in section 905(a), as determined by the President
25 pursuant to section 905(b), then grants from the Fund

1 for that country may only be made to nongovernmental
2 organizations until such time as the President determines
3 that such country meets the eligibility requirements set
4 forth in section 905(a).

5 **“SEC. 909. CORAL REEF AND OTHER COASTAL MARINE RE-**
6 **SOURCES FUND.**

7 “(a) ESTABLISHMENT.—Each beneficiary country
8 that enters into a Coral Reef and Other Coastal Marine
9 Resources Agreement under section 908 shall be required
10 to establish a Coral Reef and Other Coastal Marine Re-
11 sources Fund to receive payments of interest on new obli-
12 gations undertaken by the beneficiary country under this
13 part.

14 “(b) REQUIREMENTS RELATING TO OPERATION OF
15 FUND.—The following terms and conditions shall apply
16 to the Fund in the same manner as such terms as condi-
17 tions apply to an Enterprise for the Americas Fund under
18 section 707 of this Act:

19 “(1) The provision relating to deposits under
20 subsection (b) of such section.

21 “(2) The provision relating to investments
22 under subsection (c) of such section.

23 “(3) The provision relating to disbursements
24 under subsection (d) of such section.

1 **“SEC. 910. BOARD.**

2 “(a) ENTERPRISE FOR THE AMERICAS BOARD.—The
3 Enterprise for the Americas Board established under sec-
4 tion 610(a) of the Agricultural Trade Development and
5 Assistance Act of 1954 (7 U.S.C. 1738i(a)) shall, in addi-
6 tion to carrying out the responsibilities of the Board under
7 section 610(c) of such Act, carry out the duties described
8 in subsection (c) of this section for the purposes of this
9 part.

10 “(b) MEMBERSHIP.—

11 “(1) INITIAL MEMBERSHIP.—Of the six mem-
12 bers of the Enterprise for the Americas Board ap-
13 pointed by the President under section 610(b)(1)(A)
14 of the Agricultural Trade Development and Assist-
15 ance Act of 1954 (7 U.S.C. 1738i(b)(1)(A)), at least
16 one shall be a representative of the Department of
17 State, at least one shall be a representative of the
18 Department of the Treasury, and at least one shall
19 be a representative of the Inter-American Founda-
20 tion.

21 “(2) ADDITIONAL MEMBERSHIP.—The Enter-
22 prise for the Americas Board shall be composed of
23 an additional four members appointed by the Presi-
24 dent as follows:

25 “(A) Two representatives from the United
26 States Government, including a representative

1 of the National Oceanographic and Atmospheric
2 Administration (NOAA) and a representative of
3 the United States Geological Survey (USGS).

4 “(B) Two representatives from private
5 nongovernmental environmental, scientific, for-
6 estry, or academic organizations with experience
7 and expertise in preservation, maintenance, sus-
8 tainable uses, and restoration of coral reefs and
9 other coastal marine resources.

10 “(c) DUTIES.—The duties described in this sub-
11 section are as follows:

12 “(1) Advise the Secretary of State on the nego-
13 tiations of Coral Reef and Other Coastal Marine Re-
14 sources Agreements.

15 “(2) Ensure, in consultation with—

16 “(A) the government of the beneficiary
17 country;

18 “(B) nongovernmental organizations of the
19 beneficiary country;

20 “(C) nongovernmental organizations of the
21 region (if appropriate);

22 “(D) environmental, scientific, oceano-
23 graphic, and academic leaders of the beneficiary
24 country; and

1 “(E) environmental, scientific, oceano-
2 graphic, and academic leaders of the region (as
3 appropriate),
4 that a suitable administering body is identified for
5 each Fund.

6 “(3) Review the programs, operations, and fis-
7 cal audits of each administering body.

8 **“SEC. 911. CONSULTATIONS WITH THE CONGRESS.**

9 “The President shall consult with the appropriate
10 congressional committees on a periodic basis to review the
11 operation of the Facility under this part and the eligibility
12 of countries for benefits from the Facility under this part.

13 **“SEC. 912. ANNUAL REPORTS TO THE CONGRESS.**

14 “(a) IN GENERAL.—Not later than December 31 of
15 each year, the President shall prepare and transmit to the
16 Congress an annual report concerning the operation of the
17 Facility for the prior fiscal year. Such report shall
18 include—

19 “(1) a description of the activities undertaken
20 by the Facility during the previous fiscal year;

21 “(2) a description of any Agreement entered
22 into under this part;

23 “(3) a report on any Funds that have been es-
24 tablished under this part and on the operations of
25 such Funds; and

1 “(4) a description of any grants that have been
2 provided by administering bodies pursuant to Agree-
3 ments under this part.

4 “(b) SUPPLEMENTAL VIEWS IN ANNUAL REPORT.—
5 Not later than December 15 of each year, each member
6 of the Board shall be entitled to receive a copy of the re-
7 port required under subsection (a). Each member of the
8 Board may prepare and submit supplemental views to the
9 President on the implementation of this part by December
10 31 for inclusion in the annual report when it is trans-
11 mitted to Congress pursuant to this section.”.

[The prepared statements of Chairman Hyde follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

H.R. 2368

I strongly support H.R. 2368, the Viet Nam Human Rights Act, and I want to thank and congratulate Representative Chris Smith, the Chairman of the House International Relations Committee, and the other co-sponsors of this comprehensive human rights legislation.

In September, the House is likely to approve the U.S.-Viet Nam Bilateral Trade Agreement. We are all hopeful that free trade will improve the lives of the Vietnamese people and that it will eventually create irresistible domestic pressure for human rights and democracy in Vietnam. In the meantime, however, the Vietnamese government remains one of the most repressive regimes on Earth. Religious persecution—especially of Buddhists and of evangelical Protestants—has taken a turn for the worst during the last year, and since February the government has been engaged in a brutal crackdown against members of the Montagnard ethnic minority groups who participated in peaceful demonstrations seeking the return of their traditional lands.

I think it is important, therefore, that in expanding trade relations we avoid sending a message of approval or complacency about Hanoi's human rights record. This bill makes clear that progress toward freedom and democracy will continue to be a central theme of United States foreign policy toward Vietnam. It uses forms of leverage other than trade sanctions to promote this objective—such as conditions on nonhumanitarian foreign assistance, guarantees that U.S. educational and cultural exchange programs will be open to people who share our values, and serious efforts to overcome the jamming of Radio Free Asia.

I urge the Committee to report this important legislation to the House with a favorable recommendation.

H.R. 2272

I am pleased that the Committee is marking up H.R. 2272, the Coral Reef and Coastal Marine Conservation Act of 2001, a bill introduced by our colleague, Mr. Kirk of Illinois, and cosponsored by the distinguished Chairman Emeritus of our Committee, Mr. Gilman of New York, Vice Chairman Chris Smith of New Jersey, and Mr. Faleomavaega of American Samoa.

H.R. 2272 authorizes \$10 million for each of the fiscal years 2002 through 2005, to build on the environmental and conservation programs of the Enterprise for the Americas Initiative and the Tropical Forest Conservation Act that was recently marked up by the Committee, passed by the Congress, and soon to be enacted into law by the President.

In simple terms, the Coral Reef and Coastal Marine Conservation Act helps to protect the world's dwindling coral reefs through debt-for-nature swaps, buy backs, or debt restructuring. This successful program, which is modeled on former President Bush's innovative Enterprise for the Americas Initiative, is another creative example of how we can address developing country debt while helping to protect our planet's environment.

The Act gives the President the authority to reduce certain forms of debt owed to the United States in exchange for the deposit by eligible developing countries of local currencies in a Coral Reef facility to preserve, restore, and maintain coral reefs throughout the developing world. These funds are used by qualified non-governmental organizations working to preserve the world's most endangered coral reefs.

This program is overseen by a board of directors in the United States that is comprised of U.S. public and private officials, and reports on progress made to implement the program are provided annually to the Congress. I am especially pleased that key U.S. Government agencies, including the State and Treasury Departments, as well as the Inter-American Foundation, are Members of the Enterprise for the Americas Board and charged with the oversight of these programs.

I commend Mr. Kirk for his leadership and dedication in promoting conservation efforts in the developing world.

Chairman HYDE. Without objection, any Member may insert his or her remarks into the record on these two measures and the Chair recognizes Mr. Bereuter on his reservation.

Mr. BEREUTER. Thank you, Mr. Chairman.

I will not delay the Chairman's intention to proceed with the disposition of these two items of legislation in this matter, but I did want to express a concern with respect to two provisions in H.R. 2368: Section 201(b)(2)(C) which relates to something categorized as non-humanitarian assistance, the Export-Import Bank of 1945, and section 202 which relates to multilateral development institutions and the International Monetary Fund. These provisions are within the jurisdiction of the House Financial Services Committee, and I would expect that we will take these up in a referral to the Committee. I have consulted with Chairman Oxley about that and he agrees.

I am particularly concerned and would object in a rhetorical sense to the Export-Import Bank being included because the Export-Import Bank is not assistance to Vietnam. This is a denial of American firms the opportunity to compete for imports that Vietnamese would intend to make and the restrictions therefore are only on American businesses. Many of those transactions do not involve a subsidy, but are simply loan guarantees, and so I think it should not be included.

I can understand the arguments potentially on the Overseas Private Investment Corporation, which is covered in an earlier section and which is within the jurisdiction of this Committee. But, I wanted to note my concerns about these two specific provisions and with that, Mr. Chairman, I withdraw my reservation.

Chairman HYDE. Did Mr. Blumenauer wish to reserve?

He withdraws his wish to reserve.

Mr. BLUMENAUER. I will just identify myself with the comments from our colleague, Mr. Bereuter.

Chairman HYDE. Without objection, so ordered.

I have an amendment at the desk, number 6.

The clerk will designate the amendment.

Ms. BLOOMER. Amendment offered by Mr. Hyde. Page 17, strike line 18 and all that follows through page 18, line 14 and insert the following.

Chairman HYDE. Without objection, further reading of the amendment is dispensed with and the Chair recognizes himself to explain the amendment.

This amendment provides—I will wait until it is distributed.

[The amendment referred to follows:]

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 17, strike line 18 and all that follows through
page 18, line 14, and insert the following:

- 1 (d) ENHANCED CONTROL.—
- 2 (1) IN GENERAL.—Notwithstanding any other *u.c.*
- 3 provision of this ^{*Time*} ~~Act~~, the President may determine
- 4 that applying the provisions of section 204 or 211
- 5 with respect to an item on the National Security
- 6 Control List could constitute a threat to the national
- 7 security of the United States and that such item re-
- 8 quires enhanced control, including the requirement
- 9 for a license for such item. If the President deter-
- 10 mines that enhanced control should apply to such
- 11 item, the item may be excluded from the provisions
- 12 of sections 204 or 211, or both, until such time as
- 13 the President determines that enhanced control
- 14 should no longer apply to such item.
- 15 (2) CONTROL OF ITEMS.—Notwithstanding any
- 16 other provision of this Act, the President may iden-

1 (3) NONDELEGATION.—The President may not
2 delegate the authority provided under paragraphs
3 (1) and (2).

4 (4) REPORT TO CONGRESS.—The President
5 shall promptly report any determination described in
6 paragraph (1) or any items included on the National
7 Security Control List under paragraph (2), along
8 with the specific reasons for that determination or
9 inclusion (as the case may be), to the Committee on
10 International Relations of the House of Representa-
11 tives and the Committee on Banking, Housing, and
12 Urban Affairs of the Senate.

Chairman HYDE. This amendment provides the President with broadened authority to control items on the national security control list. It specifically ensures that he can set aside mandatory decontrol provisions in the bill pertaining to foreign availability and incorporated parts and components, sections 204 and/or 211, when he determines that the item could constitute a threat to the national security of the United States, replacing a more restrictive standard of what constitutes a significant threat.

This amendment further provides the President with the ability to place any item on this list and, if necessary, control its use through the licensing process. It leaves the discretion to the President to make a determination as to what constitutes a threat to our security and what items should be controlled pursuant to that threat.

With the escalation of terrorists and proliferation-related threats facing the United States, this amendment is needed to ensure that the President has the authorities he needs to place items of concern on the national security control list and to control their export notwithstanding other decontrol mandates in the bill, including an item's foreign availability and incorporation of parts and components subject to export control.

It is based on the premise that the Congress should not on the one hand be providing a wholesale delegation of its constitutional authority to regulate commerce and establish an export control system and on the other try to proscribe exactly how the President should maintain the integrity of that system in the face of unforeseen or undetermined external threats. In short, the President should not need a Geiger counter to be able to detect threats to our national security and to keep our export system in good repair.

This amendment is not intended to put undue obstacles in the face of our nation's exporters or otherwise thwart the process of the Secretary's review of all items on this control list. Rather, it intended to ensure that when compelling circumstances warrant, the President can ensure that adequate controls are in place to review an license any item which could constitute a threat to our national security.

Its adoption will ensure that we do not hamstring or otherwise limit his ability to make this determination. It maintains the non-delegation provision to ensure that this authority remains in the hands of the chief executive who will exercise it with care and discretion and it preserves the requirement in the bill that any determinations made by the President will also be promptly reported to the International Relations Committee and to the Senate Committee on Banking, Housing and Urban Affairs.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

This is a worthy amendment raising the standards by which potential export items are going to be evaluated. And when items can be used for weapons of mass destruction programs, we should insist on these kind of higher standards as set forth in the Hyde amendment.

This amendment would give more specific guidance to our agency so that they will adhere to the highest of standards when making

judgments about dual use items that could end up in weapons programs.

I thank the Chairman for this amendment and I urge my colleagues to support it.

Chairman HYDE. Mr. Lantos?

Mr. LANTOS. Thank you very much, Mr. Chairman, and I wish to identify myself with your statement on this amendment.

This is one of our key amendments which I believe the Committee must adopt. This bill gives the President of the United States authority to impose enhanced controls on exports that pose a threat to the United States. It allows him to set aside Department of Commerce decisions to decontrol an item.

The existing text of the bill requires that the threat must be determined to be significant before the President may use his authority. As we all know, sometimes the bureaucracy gets hung up for months on the definition of the word significant. The President of the United States ought to have the flexibility to control an item that could threaten our national security without waiting for a bureaucratic determination whether or not the threat meets the significant threshold.

The Secretary of Commerce is not elected by the American people. Some might argue that the President was also not elected, but that is another issue.

Chairman HYDE. Strike that from the record. [Laughter.]

Mr. LANTOS. I believe the President of the United States should be able to add items to the national security control list independently of whether or not any of his cabinet Secretaries agree.

I urge all of our colleagues on both sides of the aisle to adopt this amendment.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you.

Is there further discussion?

Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. Chairman, as a preface to this amendment and much of the debate that will take place, I just want to read two paragraphs from the letter Mr. Lantos entered into the record, in which on behalf of the Administration it says

“I am writing to express the importance President Bush and the Administration place on moving expeditiously to pass new legislation providing a firm and modern basis for controlling exports of dual use commodities and for implementing foreign policy controls when needed. As the President has personally stated, we strongly support,”

this is from the State Department,

“S. 149 as reported by the Senate Banking Committee. We urge you and other Members of the International Relations Committee to report favorably a bill containing the provisions of S. 149 expeditiously and without amendment.”

This amendment is not insignificant. This amendment lowers the threshold for a presidential determination from a significant threat to a threat. The Bush Administration has not requested this

change, so they believe the President has adequate authority to make a decision to control whatever is deemed necessary.

It appears in terms of the amendment to expand the scope of enhanced controls to the entire act, rather than only title 2. This effectively eviscerates Title 3, Foreign Policy Disciplines and Accountability Requirements.

In addition, title 3, foreign policy controls, unlike enhanced controls, are not item specific, but rather end user or country specific. And, in addition, it allows the President, rather than the Secretary of Commerce and the Secretary of Defense, to include items to put on the national security control list.

Now, I have heard the comments of the proponents saying we should not hamstring the President, we should provide flexibility and have specific guidance, but this in essence is all action that seemingly tries to benefit the President but is something that the President has said he does not want and does not need. And it is the beginning of a long list of amendments that really condition this legislation in a way in which it will undermine the balance that has been struck. To in essence expand the scope of enhanced controls to the entire act, rather than only title 2, is a rather major, major, substantive amendment, and I urge my colleagues to oppose it.

Mr. LANTOS. Will the gentleman yield for a moment?

Mr. MENENDEZ. I would be happy to yield, Mr. Lantos.

Mr. LANTOS. Thank you very much. I appreciate my friend yielding.

What we are really debating is whether it is the Secretary of Commerce or the President of the United States who is the ultimate official who should make determinations concerning threats to national security.

Now, I do not think one American in a thousand would argue that the Secretary of Commerce should be the ultimate authority. The President is the ultimate authority and Mr. Hyde's and my amendment merely places that authority where it belongs, in the hands of the President of the United States.

I want to thank my friend for yielding.

Mr. MENENDEZ. Well, reclaiming my time, I appreciate the gentleman's view, but in fact the President does have the authority to determine what is a significant threat and believes that he has the authority overall under the legislation as it was passed in the Senate to control whatever is deemed necessary. The expansion of that to other titles that were not meant to be included under enhanced control is far more than the President has asked for, far more than he seeks and, lastly, I think undermines the essence of an Export Administration Act.

I yield back the balance of my time.

Mr. ACKERMAN. Would the gentleman yield? Would the gentleman yield?

Mr. MENENDEZ. If I still have time, I would be happy to yield.

Chairman HYDE. Mr. Flake?

Mr. FLAKE. May I ask for a clarification, Mr. Chairman?

It appears that the scope is enhanced for the entire bill and not just section 2. Section 2, as we know, deals with national security threats, other sections deal with—

Chairman HYDE. The entire bill, it applies.

Mr. FLAKE. So Mr. Menendez is correct, then, that it will expand the scope significantly, reducing to threat, not just significant threat, for issues that are not even a national security threat, but just foreign policy issues.

Mr. ACKERMAN. Would the gentleman yield?

Mr. FLAKE. Yes. I will yield. Yes.

Mr. ACKERMAN. I am trying to understand—that was what I was going to ask someone as well. While it substitutes title for act, act for title, it seems like a distinction without a difference. The only thing this affects is the national security control list. So what I was going to ask Mr. Menendez was where is this mention about foreign policy controls? Where does this have effect on any other aspect of export controls other than the national security control list, which is a list that is the basis for the Secretary of Commerce's national security export controls?

So whether it says title or act, I do not understand what authority is affected. I understand the different standard, significant threat to threat, could to would, and perhaps counsel to the Committee or someone could just—I think it is important to find out whether we are talking about something real or not here because it looks to me at first blush like it does not change anything, changing title to act.

Chairman HYDE. Well, it applies to the national security control list. That is about the fifth line, the sixth line.

Mr. ACKERMAN. Yes, but that was in the particular title.

Mr. FLAKE. Reclaiming my time, those are contained in title 2 and you said that this does expand it beyond title 2. Is there a contradiction there?

Chairman HYDE. Well, it confines its expansion to those items on the national security control list. That is what it says specifically, lines 5 and 6.

Mr. ACKERMAN. Would the gentleman yield further?

Mr. FLAKE. Yes.

Mr. ACKERMAN. But the only national security control list is in title 2, so expanding it to the entire act adds nothing more than was in the Senate bill.

Chairman HYDE. That is correct.

Mr. ACKERMAN. So we could, by unanimous consent, change your amendment to go from act back to title and have no impact on what you were intending.

Mr. FLAKE. But foreign policy controls, unlike enhanced controls, are not item specific.

Mr. ACKERMAN. And foreign policy controls are not national security control list items. They are separately controlled items to end users or to countries that have nothing to do with the national security control list.

Chairman HYDE. We can clarify this very quickly.

I ask unanimous consent that the word "act" in line 3 be changed to title.

Without objection, so ordered.

Is there any further discussion?

[No response.]

Chairman HYDE. If not, the question occurs on the amendment offered by Mr. Hyde.

All those in favor, say aye.

[Chorus of ayes.]

Chairman HYDE. Opposed, nay.

[Chorus of nayses.]

Chairman HYDE. In the opinion of the Chair, the ayes have it. The ayes have it and the amendment—

Mr. MENENDEZ. Mr. Chairman, on that I request a recorded vote.

Chairman HYDE. The gentleman requests a recorded vote and Ms. Bloomer will read the roster.

Ms. BLOOMER. Mr. Gilman?

Mr. GILMAN. Aye.

Ms. BLOOMER. Mr. Gilman votes yes. Mr. Leach?

Mr. LEACH. Aye.

Ms. BLOOMER. Mr. Leach votes yes. Mr. Bereuter?

Mr. BEREUTER. Aye.

Ms. BLOOMER. Mr. Bereuter votes yes. Mr. Smith?

Mr. SMITH. Aye.

Ms. BLOOMER. Mr. Smith votes yes. Mr. Burton?

Mr. BURTON. Yes.

Ms. BLOOMER. Mr. Burton votes yes. Mr. Gallegly?

[No response.]

Ms. BLOOMER. Ms. Ros-Lehtinen?

[No response.]

Ms. BLOOMER. Mr. Ballenger?

Mr. BALLENGER. Yes.

Ms. BLOOMER. Mr. Ballenger votes yes. Mr. Rohrabacher?

Mr. ROHRABACHER. Yes.

Ms. BLOOMER. Mr. Rohrabacher votes yes. Mr. Royce?

Mr. ROYCE. Yes.

Ms. BLOOMER. Mr. Royce votes yes. Mr. King?

[No response.]

Ms. BLOOMER. Mr. Chabot?

Mr. CHABOT. Yes.

Ms. BLOOMER. Mr. Chabot votes yes. Mr. Houghton?

Mr. HOUGHTON. Yes.

Ms. BLOOMER. Mr. Houghton votes yes. Mr. McHugh?

[No response.]

Ms. BLOOMER. Mr. Burr?

[No response.]

Ms. BLOOMER. Mr. Cooksey?

[No response.]

Ms. BLOOMER. Mr. Tancredo?

[No response.]

Ms. BLOOMER. Mr. Paul?

Mr. PAUL. No.

Ms. BLOOMER. Mr. Paul votes no. Mr. Smith?

Mr. SMITH. Yes.

Ms. BLOOMER. Mr. Smith votes yes. Mr. Pitts?

[No response.]

Ms. BLOOMER. Mr. Issa?

Mr. ISSA. Yes.

Ms. BLOOMER. Mr. Issa votes yes. Mr. Cantor?

Mr. CANTOR. Yes.
Ms. BLOOMER. Mr. Cantor votes yes. Mr. Flake?
Mr. FLAKE. No.
Ms. BLOOMER. Mr. Flake votes no. Mr. Kerns?
Mr. KERNS. Yes.
Ms. BLOOMER. Mr. Kerns votes yes. Ms. Davis?
[No response.]
Ms. BLOOMER. Mr. Lantos?
Mr. LANTOS. Aye.
Ms. BLOOMER. Mr. Lantos votes yes. Mr. Berman?
Mr. BERMAN. Yes.
Ms. BLOOMER. Mr. Berman votes yes. Mr. Ackerman?
[No response.]
Ms. BLOOMER. Mr. Faleomavaega?
[No response.]
Ms. BLOOMER. Mr. Payne?
Mr. PAYNE. Pass.
Ms. BLOOMER. Mr. Menendez?
Mr. MENENDEZ. No.
Ms. BLOOMER. Mr. Menendez votes no. Mr. Brown?
[No response.]
Ms. BLOOMER. Ms. McKinney?
[No response.]
Ms. BLOOMER. Mr. Hilliard?
Mr. HILLIARD. Aye.
Ms. BLOOMER. Mr. Hilliard votes yes. Mr. Sherman?
[No response.]
Ms. BLOOMER. Mr. Wexler?
[No response.]
Ms. BLOOMER. Mr. Davis?
[No response.]
Ms. BLOOMER. Mr. Engel?
[No response.]
Ms. BLOOMER. Mr. Delahunt?
[No response.]
Ms. BLOOMER. Mr. Meeks?
Mr. MEEKS. Aye.
Ms. BLOOMER. Mr. Meeks votes yes. Ms. Lee?
Ms. LEE. Aye.
Ms. BLOOMER. Ms. Lee votes yes. Mr. Crowley?
[No response.]
Ms. BLOOMER. Mr. Hoeffel?
[No response.]
Ms. BLOOMER. Mr. Blumenauer?
Mr. BLUMENAUER. Nay.
Ms. BLOOMER. Mr. Blumenauer votes no. Ms. Berkley?
Ms. BERKLEY. Aye.
Ms. BLOOMER. Mr. Berkley votes yes. Ms. Napolitano?
Ms. NAPOLITANO. Aye.
Ms. BLOOMER. Ms. Napolitano votes yes. Mr. Schiff?
Mr. SCHIFF. Aye.
Ms. BLOOMER. Mr. Schiff votes yes. Ms. Watson?
Ms. WATSON. Aye.
Ms. BLOOMER. Ms. Watson votes yes. Mr. Hyde?

Chairman HYDE. Yes.
 Ms. BLOOMER. Mr. Hyde votes yes.
 Chairman HYDE. Mr. Sherman?
 Mr. SHERMAN. Sherman votes yes.
 Ms. BLOOMER. Mr. Sherman votes yes.
 Chairman HYDE. Mr. Crowley?
 Mr. CROWLEY. Aye.
 Ms. BLOOMER. Mr. Crowley votes yes.
 Chairman HYDE. Have all voted who wish?
 Ms. DAVIS?
 Ms. DAVIS. Aye.
 Ms. BLOOMER. Ms. Davis votes yes.
 Mr. PAYNE. Mr. Chairman?
 Chairman HYDE. Mr. Payne?
 Mr. PAYNE. No.
 Ms. BLOOMER. Mr. Payne votes no.
 Chairman HYDE. Mr. Pitts?
 Mr. PITTS. Yes.
 Ms. BLOOMER. Mr. Pitts votes yes.
 Chairman HYDE. The clerk will report.
 I am sorry. Mr. McHugh?
 Mr. MCHUGH. Aye.
 Ms. BLOOMER. Mr. McHugh votes yes.
 Chairman HYDE. The clerk will report.
 Ms. BLOOMER. On this vote, there are 29 ayes and five noes.
 Chairman HYDE. And the amendment is agreed to.
 The Chair recognizes Mr. Lantos for purposes of an amendment.
 Mr. LANTOS. Mr. Chairman—
 Mr. ROHRABACHER. Mr. Chairman?
 Chairman HYDE. Who seeks recognition?
 Mr. ROHRABACHER. Could I just have a point of personal privilege for one moment?
 We have a long session here today and I would just like to ask as a favor to those of us who are trying to get a job done. We understand where there are honest disagreements, but unless it really is important to call for a vote, and I personally do not believe the last vote was necessary to call for a vote, I would hope that our Members let us move forward and get the job done as quickly as possible.
 When there are honest disagreements and we have a contention, sure, let us fight it out and let us call for votes but if it is not going to be a contentious issue, let us get on with the business.
 Chairman HYDE. The clerk will report the Lantos amendment.
 Ms. BLOOMER. Amendment offered by Mr. Lantos. Page 42, insert the following after line 7, (4) to control the export of test articles intended for clinical investigation.
 Mr. LANTOS. I ask that the amendment be considered as read.
 Chairman HYDE. Without objection, so ordered.

\EAA.AM2

H.L.C.

15

AMENDMENT TO H.R. 2581
OFFERED BY Mr. Hyde / Mr. Lantos

Page 42, insert the following after line 7:

1 (4) To control the export of test articles in-
 2 tended for clinical investigation involving human
 3 subjects so as to foster public health and safety and
 4 to prevent injury to the foreign policy of the United
 5 States as well as to the credibility of the United
 6 States as a responsible trading partner.

Page 58, insert the following after line 3:

7 **SEC. 312. MEASURES TO PROTECT THE PUBLIC HEALTH.**

8 (a) **IN GENERAL.**—In order to carry out the policy
 9 set forth in paragraph (4) of section 301(b), test articles
 10 intended for clinical investigations shall be approved for
 11 export by the President only pursuant to an export license.

12 (b) **CRITERIA FOR EXPORT LICENSE.**—In addition to
 13 the criteria set forth in paragraph (4) of section 401(a)
 14 of this Act, the President shall require, as a prerequisite
 15 for approval of an export license for a test article required
 16 by subsection (a) of this section, that an applicant for such
 17 license—

18 (1) identify each clinical investigation for which
 19 the test article is intended; and

1 (2) submit proof that each of the protocols for
2 every clinical investigation identified under para-
3 graph (1) has been reviewed by an institutional re-
4 view board and met the same standards for the pro-
5 tection of the rights and welfare of human subjects
6 as would be required for IRB approval of the pro-
7 tocol if the protocol were for a clinical investigation
8 of such test article pursuant to the Federal Food,
9 Drug, and Cosmetic Act.

10 (c) REPORTING REQUIREMENT.—Not later than one
11 year after the date of enactment of this Act, and annually
12 thereafter, the President shall prepare and submit to the
13 appropriate congressional committees a report regarding
14 the approval of export licenses as required by subsection

15 (a). Such report shall include—

16 (1) the names of the applicants for such export
17 licenses;

18 (2) the names of approved applicants for such
19 export licenses; and

20 (3) the destination country or countries for
21 each application for such export licenses.

22 (d) EXCEPTION.—The provisions of this section shall
23 not apply if the destination country is a full member of
24 the European Union, a full member of the European Free

1 Trade Association, Canada, Japan, Australia, or New Zea-
2 land. ^{Israel}_n

3 (e) DEFINITIONS.—In this section:

4 (1) APPLICATION FOR RESEARCH OR MAR-
5 KETING PERMIT.—The term “application for re-
6 search or marketing permit” has the meaning given
7 that term in section 56.102(b) of title 21, Code of
8 Federal Regulations, or successor regulations.

9 (2) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term “appropriate congressional com-
11 mittees” means the Committee on International Re-
12 lations of the House of Representatives and the
13 Committee on Banking, Housing, and Urban Affairs
14 of the Senate.

15 (3) CLINICAL INVESTIGATION.—The term “clin-
16 ical investigation” means any experiment that in-
17 volves a test article and one or more human sub-
18 jects, and that either must meet the requirements
19 for prior submission to the Food and Drug Adminis-
20 tration under section 505(i), 507(d), or 520(g) of
21 the Federal Food, Drug, and Cosmetic Act (21
22 U.S.C. 355(i), 357(d), or 360j(g)), or need not meet
23 the requirements for prior submission to the Food
24 and Drug Administration under those sections, but
25 the results of which are intended to be later sub-

1 mitted to, or held for inspection by, the Food and
2 Drug Administration as part of an application for a
3 research or marketing permit. The term does not in-
4 clude experiments that must meet the provisions of
5 part 58 of title 21, Code of Federal Regulations, or
6 successor regulations, regarding nonclinical labora-
7 tory studies.

8 (4) DESTINATION COUNTRY.—The term “des-
9 tination country” means the country into which test
10 articles are being exported.

11 (5) HUMAN SUBJECT.—The term “human sub-
12 ject” means an individual who is or becomes a par-
13 ticipant in research, either as a recipient of the test
14 article or as a control. A subject may be either a
15 healthy individual or a patient.

16 (6) INSTITUTION.—The term “institution”
17 means any public or private entity or agency (includ-
18 ing Federal, State, and other agencies), either in the
19 United States or other country.

20 (7) INSTITUTIONAL REVIEW BOARD; IRB.—The
21 terms “institutional review board” and “IRB” mean
22 any board, committee, or other group formally des-
23 ignated by an institution to review, to approve the
24 initiation of, and to conduct periodic review of, bio-
25 medical research involving human subjects. The pri-

1 mary purpose of such review is to assure the protec-
2 tion of the rights and welfare of the human subjects.

3 (8) IRB APPROVAL.—The term “IRB approval”
4 means the determination of an IRB made pursuant
5 to part 56 of title 21, Code of Federal Regulations,
6 or successor regulations, that a clinical investigation
7 has been reviewed and may be conducted at an insti-
8 tution within the constraints set forth by the IRB
9 and by other institutional and Federal requirements.

10 (9) TEST ARTICLE.—The term “test article”
11 means any drug for human use, biological product
12 for human use, medical device for human use,
13 human food additive, color additive, electronic prod-
14 uct, or any other article that would be subject to
15 regulation under the Federal Food, Drug, and Cos-
16 metic Act if introduced into interstate commerce.

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos**21**

Page 57, strike line 1 and all that follows through page 58, line 3, and insert the following:

1 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

2 (a) IN GENERAL.—Crime control and detection in-
3 struments and equipment shall not be approved for export
4 by the Secretary except pursuant to an individual export
5 license.

6 (b) IMPLEMENTATION.—Notwithstanding any other
7 provision of this Act—

8 (1) any determination by the Secretary of what
9 goods or technology shall be included on the list es-
10 tablished pursuant to this subsection as a result of
11 the export restrictions imposed by this section shall
12 be made with the concurrence of the Secretary of
13 State; and

14 (2) any determination by the Secretary to ap-
15 prove or deny an export license application to export
16 crime control or detection instruments or equipment
17 shall be made in concurrence with the recommenda-
18 tions of the Secretary of State submitted to the Sec-
19 retary with respect to the application pursuant to
20 section 401 of this Act.

1 (c) LIMITATIONS.—

2 (1) IN GENERAL.—Notwithstanding subsection
3 (b), the Secretary shall not approve the export to a
4 country of crime control and detection instruments
5 and equipment especially susceptible to abuse as im-
6 plements of torture if the government of such coun-
7 try, or any group supported by or acting on behalf
8 of such government, has repeatedly engaged in acts
9 of torture unless the Secretary, with the concurrence
10 of the Secretary of State, determines that the end
11 user of the instruments or equipment proposed for
12 export has not been engaged in acts of torture.

13 (2) PROHIBITION.—The export of leg irons,
14 saps, blackjacks, electroshock stun belts, thumb
15 cuffs, and items specially designed as implements of
16 torture, as determined by the Secretary, including
17 components produced for incorporation into these
18 items and the technology used for the development
19 or production of these items, shall be prohibited.

20 (d) EXCEPTION.—Except as provided in subsection
21 (c), subsection (a) shall not apply to exports to countries
22 that are NATO or are major non-NATO allies.

23 (e) DEFINITION.—For purposes of this section, the
24 term “acts of torture” means acts committed by a person
25 acting under the color of law that are specifically intended

1 to inflict severe physical or mental pain or suffering (other
2 than pain or suffering incidental to lawful sanctions) upon
3 another person within the custody or physical control of
4 the person performing the acts.

Chairman HYDE. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. LANTOS. Mr. Chairman, I offer my en bloc amendment out of concern that the United States and other western nations are directly contributing to human suffering overseas in the widespread violation of internationally recognized human rights by exporting specific torture products and experimental medicine for human experimentation.

I am very pleased, Mr. Chairman, that you have joined me as a co-sponsor of this en bloc amendment.

The first part of my en bloc amendment would write into law a standard that should be an axiom of U.S. human rights foreign policy. The United States, while it seeks to improve respect for the basic human rights of persons throughout the globe, ought not to sell torture implements that make it easier for them to inflict pain and suffering on their helpless victims.

In the right hands, crime control equipment can protect the innocent. In the wrong hands, it is used on the innocent.

No United States exporter should ever want to sell its products to a government or government-supported groups that will use these products to torture citizens overseas. U.S. exporters do not have the resources to know the totality of the human rights practices of their prospective customers. It is up to our government to ensure that American products do not go to abusive governments.

My amendment will ensure that there is a presumption of denial of legitimate but easily abused crime control equipment to nations that torture. My amendment will not interfere with the legitimate trade in crime control items to responsible countries.

The amendment also prohibits the outright export of certain types of equipment that is especially susceptible to abuse, such as torture implements, saps and blackjacks, steel lengths jacketed in flexible leather or leather wands intended to deliver blunt force impacts. They may be billed as self-defense instruments, but in reality they are most effective against unarmed, immobilized persons.

Thumb cuffs, sometimes with serrated edges, are abominable devices.

The export of electroshock discharge weapons from stun wands to hand-held self-defense "zappers" is also troubling, since they can be easily used as torture devices. Electroshock stun belts worn around the waist and delivering a shock by remote control are especially difficult to justify as self-defense devices.

I urge my colleagues to support this common sense addition to the Export Administration Act.

The second part of my amendment, Mr. Chairman, would stop a very disturbing practice of some American pharmaceutical companies, namely, the use of human beings in poor countries as guinea pigs in experimental drug tests.

I would first like to make clear that I am not opposed to U.S. drug companies testing overseas, but I believe these tests must be conducted under standards no less rigorous than if these tests were conducted in the United States. Human life in any underdeveloped country is as valuable as human life in California or New York.

Mr. Chairman, as the pace and scope of clinical trials for biomedical and behavioral research have increased here at home, the

number of experiments conducted overseas, particularly in poor countries, has also expanded dramatically.

More often than not, human participants in clinical trials overseas are poor, illiterate and uninformed. Poverty in these countries provides an opportunity for unethical researchers to disregard the protection of the rights and welfare of poor individuals to hurry their test results and rush drugs to market.

Two weeks ago, the Administration suspended all federally funded research at Johns Hopkins University because one human participant died. In the third world, death during experiments is too often an accepted casualty of science or, in some cases, outright negligence.

Last December, Mr. Chairman, *The Washington Post* published a shocking six-part investigation on the use of poor and illiterate people in the developing world as human guinea pigs for experimental medication. Instead of submitting experimental drugs for approval on human subjects here in the United States, companies are increasingly going overseas to conduct these dangerous experiments to save money and to avoid having to inform people of risks.

In Nigeria, for instance, children in a meningitis experiment were given a drug unapproved by the FDA for experimentation on humans in this country. Eleven children died, and I wish that Chief Executive Officers of those companies who did this would have to look into the eyes of the mothers whose children are no longer with us.

In Argentina, a father of three died after emergency surgery failed to close a hole in his heart. It turns out that the problem with his heart could be directly traced to the experimental medication given to him by doctors. His signature had been forged on the consent form.

In my native city of Budapest, two psychiatric patients were pressured for weeks on end to agree to participate in an experimental drug test. They eventually submitted to the human experimentation without any knowledge of the risks of the medicine they were taking.

In many places, the only way to get medical treatment in many institutions is to agree to take experimental drugs. One Swiss company known to violate the rights of patients, including that of informed consent, has performed 161 human drug trials for some of the world's best known pharmaceutical companies.

Mr. Chairman, it is important that the United States Government do all it can to help protect human beings in poor countries who are vulnerable to unethical biomedical and behavioral researchers.

This amendment, the Lantos-Hyde amendment, will provide one important safeguard by requiring pharmaceutical companies wishing to export experimental drugs intended for clinical research overseas to have successfully passed the research protocols here in the United States required for human experimentation.

The amendment will also require that more information be provided to Congress on these exports used in human experimentation.

Our amendment will help ensure that overseas research conducted by American companies meets the same high ethical stand-

ards for patients we enforce in this country for ourselves. We would not want our spouses, our children, or our grandchildren to be subjected to experimental drugs without their informed consent. Husbands, wives, kids, grandkids in the developing world should not get any less protection.

Mr. Chairman, I strongly urge my colleagues to support this en bloc amendment.

Mr. GILMAN. Mr. Chairman?

Chairman HYDE. The gentleman from New York, Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Chairman, I am pleased to support the Hyde-Lantos amendment number 21 and the Hyde-Lantos amendment number 15.

Amendment number 21 requires export licensing for crime control detention instruments so that they do not go to countries and organizations that use torture. This amendment is needed to make more certain that crime control and detention devices will not be exported to any nation that repeatedly engages in acts of torture. We do not want our products to be used for such atrocious purposes and I urge our colleagues to support that amendment.

With regard to the Hyde-Lantos amendment number 15 on testing articles, the amendment, as Mr. Lantos noted, regulates the export of test articles that are intended for clinical investigations involving human subjects so as to foster public health safety. This amendment will ensure that any test articles for clinical investigations will be permitted for export only if they meet adequate safety standards.

This amendment will help us to maintain our high testing standards for our exports. We want our foreign trading partners to enjoy the same high standards as our nation does.

I thank the Chairman for yielding.

Chairman HYDE. Ms. Lee is next.

Ms. LEE. Thank you, Mr. Chairman.

I would just like to acknowledge my support and thank Mr. Lantos and Mr. Hyde for offering this amendment. I just have one question with regard to this. As it is carried out, if in fact, for instance, a pharmaceutical did not meet the test and proceeded anyway to export either drugs or the clinical trial procedures, what type of—

Mr. LANTOS. They would be in violation of law.

Ms. LEE. They would be in violation. So the current law that would impose whatever penalties there are in place would be applied.

Mr. LANTOS. That is correct. My colleague is correct.

Ms. LEE. Thank you very much.

Chairman HYDE. Mr. Chris Smith of New Jersey?

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

I commend both of you for these fine amendments, but I do have a question on amendment number 21 with regard to the exemption where it says “except as provided in subsection (c), subsection (a) shall not apply to exports to countries that are NATO or major non-NATO allies.”

I am wondering whether or not Turkey is then exempted. Turkey certainly has a very serious problem with the pervasive use of tor-

ture in its prisons. I personally have held a number of hearings on that. I have gone to ANKARA and raised the issue myself. I am not precisely sure whether or not some of these items—I think electroshock and some of those other items—I do not know if American companies have actually sold these. I know we are not asking the State Department or the Administration, but they may be able to shed some light on that.

Also, what is the definition of a non-NATO ally? I mean, are there countries there that might also have a problem with torture in their prisons?

Mr. LANTOS. Questions, as always, are excellent. Non-NATO ally would, for instance, be Australia, which has testing procedures and standards fully comparable to our own.

Mr. SMITH OF NEW JERSEY. I was speaking to the torture implements, amendment number 21.

Mr. LANTOS. If a country—let us assume that a NATO country is found to engage systematically in torture under the provisions of the act, it would not be qualified to have such items exported to it.

Mr. SMITH OF NEW JERSEY. So the exemption would not apply to them?

Mr. LANTOS. So the exemption would not apply. My friend is correct.

Chairman HYDE. Any further discussion?

The gentleman from New Jersey.

Mr. MENENDEZ. You know, who could argue with Mr. Lantos' propositions?

Mr. LANTOS. I am glad to hear that.

Mr. MENENDEZ. With all due respect, I guess I will. The reality is that all of the things that Mr. Lantos seeks to do are desirous except that this is not the venue and, secondly, the way he seeks to do it is incredibly broad.

First of all, for my colleagues who may not follow this particular line of inquiry in terms of what we are doing here today, the whole purpose of an Export Administration Act follows along two basic purposes: national security and foreign policy. Section 201 of the bill defines national security purposes to be to restrict the exports that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States, to stem the proliferation of weapons of mass destruction and the means to deliver them, and to deter acts of international terrorism.

And then section 301(b) defines foreign policy purposes to be to promote the foreign policy objectives of the United States, to promote international peace, stability, and respect for fundamental human rights and to deter and punish acts of international terrorism.

Now, if you look under the provisions of the amendment as it relates to what would seemingly be something that one would clearly want to accept, preventing export of instruments of torture, it effectively would prohibit what may be legitimate exports for legitimate uses. Although it purports to provide exceptions for legitimate exports, the exceptions definition would virtually be impossible to meet.

For example, an export may go forward only if the end user, the entity receiving it, has not engaged in torture, the instruments have legitimate law enforcement purposes and the instruments cannot be used to inflict torture. Yet that definition renders the exception meaningless since few items from common household goods to sports equipment could not be used to inflict torture. Therefore, this is so broad that even the good intentions mean we are going to capture this in such a way that in essence we are really going to have an act bogged down in the ability of America to compete abroad without the real purposes of national security, which is the purpose of an Export Administration Act, and even in the promotion of legitimate foreign policy principles.

And you are going to include a whole new area in the area of pharmaceuticals that has absolutely nothing to do with national security issues. All of these circumstances that Mr. Lantos described are in a civilian context, not having to do with either national security or even in terms of a rogue regime or a regime that enforces torture. All of those examples were in democratic governments, for the most part. So this is locking the Export Administration Act into a whole new field that is not intended.

My colleagues, what we seek to do in this act, what has been the history of this act and its predecessors, is to think of this as an iceberg and that tip of the iceberg is what America uniquely can control and has, and that we should control at any cost in our national interests. The rest of that iceberg is available out there in the world, where any other country is going to be able to sell, that should not be controlled. We should not put American businesses at a disadvantage and at the same time, I will argue later at another opportunity in terms of our defense capabilities, undermine our defense capabilities in this global environment.

So I understand all of the great things Mr. Lantos wants to do, but what in essence this is an attempt to do is to broaden in such a way, including things that never historically have been meant to be included in the Export Administration Act, and to define it in such a broad way that you could not possibly export any of these items because any of those instruments could be used to inflict torture. Any of those instruments. Believe me, even my golf club could be used to inflict torture and it has on more than one occasion on myself.

So the bottom line is that it is overly broad and, again, well intentioned—

Mr. LANTOS. Will my friend yield?

Mr. MENENDEZ. The gentleman has had far more time than I have, but I would be happy to—since my red light is on, I do not know if I have any more time, but if the Chair permits me, I would be happy to.

Mr. LANTOS. I appreciate my friend yielding.

There are three observations I would like to make. The first one concerns your comment, Mr. Menendez, that national security and foreign policy are the only subjects we deal with. I know I do not need to remind you that human rights have become, certainly since the Carter Administration with the establishment of a whole office of human rights, the creation of the position of Assistant Secretary of State for Human Rights, and the publication of an almost 2000-

page human rights report indicating human rights conditions in every country of the world, a very legitimate concern of foreign policy of this country. So when we are dealing with human rights matters, we are dealing with U.S. foreign policy.

Secondly, while I suspect your golf club under certain circumstances can be viewed as an instrument of torture, I think it is a frivolous aspect of your comment to confuse those items with the enormously painful physical torture inflicted on large numbers of men, women and children in countries——

Mr. MENENDEZ. Reclaiming my time——

Mr. LANTOS. If you will allow me to finish the sentence——

Mr. MENENDEZ. Well, I am not going to allow the gentleman as I gave him the courtesy of yielding to him to then undermine and basically, more importantly, categorize differently what I am saying.

When you in fact say that instruments cannot be used to inflict torture in that broad context, you have a wide range of issues, not the ones that you mention, which we would all agree on, but a wide range of items that could be exported that all could fall into that category. So while listing some that we would universally agree to, you have by the insertion of that clause created an enormous catch-all which I was humorously trying to give an example of. The reality is that you have so many items that would fall under that, that you would render the ability to export relatively impossible under that section and that is what is objectionable.

Chairman HYDE. The gentleman's time has expired.

The Chair yields himself 5 minutes and yields to Mr. Lantos.

Mr. LANTOS. I thank my friend. We will have a vote on this in a minute or 2, and those who choose to legalize torture instruments to regimes which systematically torture their citizens will be free to vote against the amendment; also those who feel that medical experimentation without proper safeguards is fully appropriate when it is carried out on individuals in third world countries who are illiterate, ignorant and have no idea what is happening. I think the Committee will wish to express its view that if we insist on criteria for medical experimentation in this country as we introduce new drugs, those same criteria should be used abroad, and I want to thank the Chair.

Chairman HYDE. Is there further discussion?

Mr. Smith?

Mr. SMITH OF MICHIGAN. My concern also, Mr. Chairman, is the possible unintended broadness of these particular two amendments. Does this mean that our companies can't sell pharmaceutical products to another country that approves the use of a particular drug in that country, if the FDA has not approved the drug in this country? Is the only way to make that sale is for the pharmaceutical company to move to that other country to produce that product?

Does this mean that items such as——

Mr. LANTOS. Will the gentleman yield for an answer?

Mr. SMITH OF MICHIGAN. Let me finish the rest of my question.

Does it mean that items that could be used for torture, maybe it is cattle probes, maybe it is something else, are going to have to go through this rigorous bureaucratic hurdles of licensing to accom-

modate the language of the law? I am just looking at the language here, where it says you shall identify, you shall prove in the licensing and you shall specify the intended purpose the product is going to be used.

I am just a little bit concerned, Mr. Lantos, that this might end up being much broader and a larger bureaucratic harassment of exporters than you intend. Certainly I would yield and I relinquish back the remainder of my time, Mr. Chairman.

Chairman HYDE. Mr. Houghton, who has been patiently waiting while the Chair has glossed over him so many times.

Mr. HOUGHTON. Thank you very much, Mr. Chairman.

I just have a very simple question: Why is this needed at all? I mean, the President has the right to do what we are saying. Why do we have to superimpose another, more refined law?

Mr. LANTOS. Because current legislation does not deal with the issue, Mr. Houghton.

To answer my other friend's question, the pharmaceutical exports relate only for experimentation purposes. If we are not allowed to use these for experimental purposes, for research purposes here, we should not use them in Nigeria.

Mr. SMITH OF MICHIGAN. But even if that country has approved that particular drug for use in that country?

Mr. LANTOS. Well, the whole issue is that many countries, particularly in the underdeveloped world, as my friend knows, I presume, as well as I do, have non-existent or minimal criteria. That is why we have exempted countries like Switzerland or Holland or the United Kingdom, which have comparable FDA type organizations where the criteria are acceptable and we waive the legislation, insofar as countries are concerned, which test drugs responsibly. Nigeria does not do it. Many of the underdeveloped countries do not do it. So to get a stamp of approval from the Nigerian FDA does not give much comfort to the mother whose child will die as a result of using that medication.

Mr. MENENDEZ. Would the gentleman from New York yield?

Mr. Houghton, I believe you have the time.

Chairman HYDE. Mr. Houghton does have the time.

Mr. HOUGHTON. Yes, I will, but let me just say something before I yield because, if I understand it, under current foreign policy definition, the President is able to decide that imposing controls on pharmaceutical products promotes the foreign policy objectives of the United States without having to amend the law itself.

So having said that, I would—

Chairman HYDE. Would the gentleman—

Mr. MENENDEZ. I appreciate the gentleman yielding and I wanted to make two points. The one he just made, that under the act right now the President would have the power to make that decision if he believed that in the foreign policy interests of the United States, including for human rights purposes, that this would be something that he in fact would want to invoke the power to stop from export.

Secondly, in the pharmaceutical context, we are now telling democracies abroad what they can and cannot do. I have often heard many of my colleagues here suggest that in fact our interventionism abroad, denying those to do that which they seek to do

under the views of what they believe is in the best interests of their systems, countries democratically elected, that they in fact will not be able to achieve the values of protocols that will be developed in their countries that can have lifesaving, life-enhancing drugs that ultimately will improve the lives of their citizens.

So this is a unique twist on a set of circumstances that the President has the power to control in the first place and, secondly, that we are now beginning—we will tell those countries, including democracies, what they can and cannot do in the interests of their citizens.

I thank the gentleman for yielding.

Chairman HYDE. Mr. Chris Smith and Mr. Doug Bereuter. We will take whichever one of you wishes to go first.

Mr. BEREUTER. We will share the time.

Chairman HYDE. All right.

Mr. BEREUTER. Mr. Chairman, Mr. Smith and I have been laboring over the language here. I have two questions. I know Mr. Smith shares one of those questions, if I could address it to Mr. Lantos.

With respect to the amendment that deals with crime control equipment—

Chairman HYDE. If the gentleman would withhold, we have a vote. There are going to be three votes, I am informed. The Chair will recess until 2 p.m. The reason for the long lunch hour is there are intervening functions that must be attended, but we will be back at 2 o'clock and if the gentleman would withhold and renew his motion.

The Committee stands in recess until 2 p.m.

[Recess.]

Chairman HYDE. The Committee will come to order. When the Committee recessed, we were marking up the bill, H.R. 2581, the Export Administration Act of 2001. Pending were amendments 15 and 21, which were offered en bloc by Mr. Lantos, and the Chair now recognizes Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman. I ask unanimous consent that the Hyde-Lantos amendment number 21 be modified by the text that I have at the desk.

Chairman HYDE. The clerk will report the text.

Mr. MENENDEZ. Mr. Chairman, just reserving the right to object. I have not seen the language, so I do not know what it says.

Chairman HYDE. The gentleman reserves the right to object. Do we have any help in distributing these? Highly paid and technical staff, please distribute the papers. The clerk will report the modification.

Ms. BLOOMER. Amendment offered by Mr. Lantos: Page 57, strike line one and all that follows—

[The amendment referred to follows:]

AMENDMENT TO H.R. 2581
OFFERED BY MR. HYDE/ MR. LANTOS

Page 57, strike line 1 and all that follows through page 58, line 3, and insert the following:

1 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

2 (a) IN GENERAL.—Crime control and detection in-
3 struments and equipment shall not be approved for export
4 by the Secretary except pursuant to an individual export
5 license.

6 (b) IMPLEMENTATION.—Notwithstanding any other
7 provision of this Act—

8 (1) any determination by the Secretary of what
9 goods or technology shall be included on the list es-
10 tablished pursuant to this subsection as a result of
11 the export restrictions imposed by this section shall
12 be made with the concurrence of the Secretary of
13 State; and

14 (2) any determination by the Secretary to ap-
15 prove or deny an export license application to export
16 crime control or detection instruments or equipment
17 shall be made in concurrence with the recommenda-
18 tions of the Secretary of State submitted to the Sec-
19 retary with respect to the application pursuant to
20 section 401 of this Act.

1 (c) LIMITATION.—

2 (1) IN GENERAL.—Notwithstanding subsection
3 (b), the Secretary shall not approve the export to a
4 country of crime control and detection instruments
5 and equipment especially susceptible to abuse as im-
6 plements of torture if the government of such coun-
7 try, or any group supported by or acting on behalf
8 of such government, has repeatedly engaged in acts
9 of torture unless the Secretary, with the concurrence
10 of the Secretary of State, determines that the end
11 user of the instruments or equipment proposed for
12 export has not been engaged in acts of torture.

13 (2) LIST.—The Secretary shall establish and
14 maintain a list of crime control and detection instru-
15 ments and equipment especially susceptible to abuse
16 as implements of torture for purposes of paragraph
17 (1), and shall publish such list in the Federal Reg-
18 ister.

19 (d) EXCEPTION.—Subsection (a) shall not apply to
20 exports to countries that are NATO or are major non-
21 NATO allies.

22 (e) PROHIBITION.—Notwithstanding any other provi-
23 sion of this section, including subsection (d), the export
24 to any country of leg irons, saps, blackjacks, electroshock
25 stun belts, thumb cuffs, and items specially designed as

1 implements of torture, as determined by the Secretary, in-
2 cluding components produced for incorporation into these
3 items and the technology used for the development or pro-
4 duction of these items, shall be prohibited.

5 (f) DEFINITION.—For purposes of this section, the
6 term “acts of torture” means acts committed by a person
7 acting under the color of law that are specifically intended
8 to inflict severe physical or mental pain or suffering (other
9 than pain or suffering incidental to lawful sanctions) upon
10 another person within the custody or physical control of
11 the person performing the acts.

Chairman HYDE. Without objection, further reading of the amendment is dispensed with, and the Chair recognizes Mr. Lantos for 5 minutes in support thereof.

Mr. LANTOS. Thank you very much, Mr. Chairman. I believe the modifications in this amendment address the concerns that were raised in our morning session. The changes would do two things. First, they would require the Secretary of Commerce to establish a list of equipment that is designated as especially susceptible to abuse for torture and make that list available to the public. I want to assure Members that the Administration is not going to put golf clubs and baseball bats on the list of torture devices.

Second, my modification would ensure that the prohibition on such specific items as leg irons, saps, black jacks, and electroshock stun belts, and thumb cuffs would be prohibited to any country, including NATO and non-NATO allies.

I would like to clarify a couple of other points. This Hyde-Lantos amendment is not introducing a new subject into the legislation or even current law. Section 311 in the current Export Administration Act already stipulates that crime-control equipment must be licensed. This amendment would also not prevent the export of legitimate crime-control equipment, from police helmets and shields to fingerprinting equipment. I ask my colleagues to support this amendment.

Mr. BEREUTER. Would the gentleman yield?

Mr. LANTOS. I would be happy to yield to my friend.

Mr. BEREUTER. I thank the distinguished gentleman for yielding. I would say that by the rearrangement of the gentleman's amendment and specifically what he has done in the new subsection E, it answers this Member's concern. I cannot speak for Mr. Smith, but we seem to have the same concern, so I assume it would be satisfactory to him, too. Thank you very much for your cooperation.

Mr. ROHRABACHER. Mr. Chairman?

Chairman HYDE. Mr. Rohrabacher.

Mr. ROHRABACHER. I do not know what the parliamentary procedure is. Is it in order to amend an amendment?

Chairman HYDE. Yes, sir.

Mr. ROHRABACHER. I would like to amend this amendment to exclude lines 19, 20, and 21 because I do not see any need—if we are going to have a ban on this type of equipment that is used for torture, et cetera, I do not see any reason we should be excluding our allies. Why are we saying we can ship this sort of stuff to our allies?

Mr. BEREUTER. Would the gentleman yield?

Mr. ROHRABACHER. Yes.

Mr. BEREUTER. This was a point that we made, and if you see the way that it is reconstituted, if you look at lines 23 on page two, it excludes subsection D above. So in other words, none of these items—leg irons, saps, black jacks, and so on—can be exported to anyone, and that is the concern that Mr. Smith and I had. But I think the gentleman, by the words on line 23 at page two, has solved that problem.

Mr. ROHRABACHER. Okay.

Mr. LANTOS. If the gentleman will yield.

Mr. ROHRABACHER. Why don't we just eliminate those three lines, then? If we are not making the exceptions, why don't we just eliminate those three lines to make it clear that we are not saying that if you are a friend of the United States, you get all of these torture devices, but if you are not a friend of the United States, well, then we cannot export it?

Mr. BEREUTER. Would the gentleman yield again?

Mr. ROHRABACHER. Sure.

Mr. BEREUTER. I think the reason, and the gentleman from California can pursue this if he wishes, but the provisions on lines 1 through 18 apply in general to crime-control equipment, and we make exceptions for those for NATO and major non-NATO allies. And then they created a new category of those things that are susceptible to use or specifically designed for use of torture. We are saying they should not be exported at all, and the gentleman, therefore, has moved them to subsection E.

But the other provisions related to crime-control equipment are found on the part that reads from line 1 through line 18, and so we would have to have an exception for those just for our NATO allies and major non-NATO allies for crime-control equipment generally. But the items that could be used for torture are specifically in a different section now.

Mr. ROHRABACHER. My reading of lines 9, 10, 11, and 12 suggests that that is not correct. I would move that lines 19, 20, and 21 be extracted from this amendment. That is my amendment.

Mr. LANTOS. We are happy to accept your clarification. We are in full accord with what you are saying and what our friend from Nebraska explains. We are all on the same wavelength.

Mr. ROHRABACHER. All right. But 19, 20, and 21 will be excluded from the amendment.

Mr. LANTOS. The current law has an exception for general licensing for NATO members and major non-NATO allies, and this preserves that general exception. We are fully in accord with you that no items of torture may be exported to any country, NATO or non-NATO.

Mr. ROHRABACHER. Correct. So thus eliminating 19, 20, and 21 will—

Mr. LANTOS. No, because that refers to a general exception. We have a blanket prohibition on torture items, but we have an exception for NATO and major non-NATO countries, for instance, on fingerprinting equipment.

Mr. BEREUTER. Which is current law.

Mr. LANTOS. Which is current law.

Mr. ROHRABACHER. Subsection A is crime-control-detection instruments, and equipment shall not be approved for export. And you are saying that subsection A does not deal with torture equipment.

Mr. LANTOS. That is correct.

Mr. ROHRABACHER. Where is the section, then, that deals with the export—

Mr. LANTOS. Absolute prohibition?

Mr. ROHRABACHER [continuing]. With the export of torture equipment?

Mr. LANTOS. Section E.

Mr. ROHRABACHER. Section E. And you are saying that there is no—

Mr. LANTOS [continuing]. Exception there.

Mr. ROHRABACHER [continuing]. There is no exception there?

Mr. LANTOS. That is correct.

Mr. ROHRABACHER. All right. That is fine with me. I withdraw my amendment.

Chairman HYDE. Is there further discussion?

Mr. HOUGHTON. Mr. Chairman?

Chairman HYDE. Mr. Blumenauer, was it you? I am sorry. Mr. Houghton.

Mr. HOUGHTON. Well, Mr. Chairman, I have just got to say here that I do not, again, know why we are micromanaging this. We have proper safeguards. The people who are in business are not unpatriotic. They want to be able to have the freedom not only with this, but I see the pattern in some of these amendments that is going to put a lock and a hobble on the ability to export perfectly normal products, and I just wonder why we are getting into this detail. It seems sort of under the guise of preventing exports of torture it effectively would prohibit many legitimate exports for legitimate purposes.

Mr. LANTOS. Will my friend yield?

Mr. HOUGHTON. Absolutely.

Mr. LANTOS. We have no intention to micromanage. It is a significant statement by the Congress of the United States that it does not wish torture equipment exported. This is not micromanagement. This is a functional policy declaration which does not exist today, and I would think that my dear friend from New York would enthusiastically support it.

We now do not have this provision. I am not questioning the patriotism of exporters, but I think there are some exporters who are ready to make a buck under any circumstances, and I do not want them to export from the United States equipment used for torture.

Mr. MENENDEZ. Will the gentleman yield? Would the gentleman yield?

Mr. HOUGHTON. Yes.

Mr. MENENDEZ. I thank the gentleman from New York for yielding. I want to piggy-back on his comment. While it may not be the intention to micromanage, in fact, that is what is being done because the gentleman from California who has offered the amendment to his original amendment said in his statement in offering it that, in fact, in defense that this is not opening up a new field under the Export Administration Act, that this is already included under the act. That is the point I tried to make earlier, that, in fact, the wherewithal of the President of the United States, whether in terms of national security or in pursuit of foreign policy, including human rights, could, in fact, stop such exportation from taking place.

So, in fact, what we are doing is what the gentleman from New York is trying to cause alarm for all of us to consider, which is that, in fact, we are micromanaging this in a way that makes it so cumbersome that the good intentions it is meant for will ultimately undermine a series of legitimate exports that should not be

controlled and should have the flow of commerce. I thank the gentleman for yielding.

Mr. HOUGHTON. Well, if I have any time remaining, I guess what I am getting at is this, and we have talked about this before, that everything in business is timing. Everything is an element of confidence. And if you assume the blackest purposes on the part of people in the industry, then obviously you have to have this sort of super-sleuth approach to this. Basically our laws are such that they cover these things. But when you get into saps and leg irons and black jacks and things like that, I really think you are going beyond what we want to try to do.

Mr. LANTOS. Will my good friend yield?

Mr. HOUGHTON. Yes.

Mr. LANTOS. It seems we are damned if we do, and we are damned if we do not. If we do not specify this torture equipment, then the critics will say it is too general; everything can be subsumed under torture equipment. When we accommodate the criticism and specifically designate these items of torture, then we are accused of micromanaging it.

We will have to resolve it with a vote. Those who wish to see any American company export torture items will vote no on my amendment, and those who do not want to see American companies, if any, exporting torture items will vote yes. I mean, we either are too general or we micromanage. So the thing to do is to remain silent at a time when torture equipment is being exported? Not everybody has the business ethics that my good friend, Amo Houghton has in such tremendous abundance.

Mr. HOUGHTON. Well, I guess the only comment I have is I would rather not be painted into a position of either voting for or against, and if I vote against, it means I am for the export of torture equipment. I do not feel that way.

Mr. LANTOS. I know you do not.

Mr. HOUGHTON. But there is a certain sort of a general approach and discipline which business must be given on their own rather than getting into every single detail. And I say this, and then I will be quiet because my time is up, because I just see that thread through all of these amendments. It just bothers me.

Mr. LANTOS. Well, if my friend will yield, all laws are directed at people who are not acting in an ethical fashion. We do not need laws against murder when it comes to Amo Houghton. We do need laws against murder for some people, and we do need this provision vis-a-vis businesses that would otherwise export torture equipment.

Mr. FLAKE. Mr. Chairman?

Chairman HYDE. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. I agree with Mr. Houghton and Mr. Menendez and others who worry about the reach here. Let me just bring up one example.

We are not just talking about the exporters of leg irons or thumb screws. I have no brief for any thumb screw manufacturers. I do not think there are any in my district. What I worry about, though, is we talk about components produced. We talk about the technologies used.

Now, I am not an engineer, but it seems to me that machine tools that can be used to make leg irons can also be used to make piston rings. And what risk do you run when you talk about the end user being a country is, for example, a U.S. subsidiary in Zimbabwe, where they may be torturing people there, may be producing piston rings with machine tools that could be used to make leg irons? The reach here is substantial, and we do not have to bring up examples of golf clubs or baseball bats being used for torture because the reach, when you talk about technology and components, is so broad and so deep, that I think there are legitimate concerns here.

Mr. MENENDEZ. Will the gentleman from Arizona yield?

Mr. FLAKE. Yes, I will.

Mr. MENENDEZ. I thank the gentleman for yielding. And I just want to say that I have immense respect and admiration for Mr. Lantos and his advocacy, and I understand what he is doing here. And I certainly will not call a vote on this amendment because I do not think that any Member should be put in that context.

However, what I do want to take this opportunity is to show our colleagues on the Committee the pattern of where we are headed. We are going to have amendments that will not put Members in the difficult nature of torture or psychotherapy, pharmaceuticals, and other things. They will go to the crux as to whether—it is very honest to say I disagree with the mass-market availability and foreign availabilities of any given product, and that is a legitimate, functional difference.

This unfortunately is a set of circumstances in which there is a broad overreach, not really ever in the historical nature of the act already by the author's own words, already taken care of under the underlying act. So when we get past this, then we are going to come to the real issues as to whether we really want to have an ability to export or whether we, in fact, want to hamper ourselves, lift back on the 20th century, and understand that we are going to further narrow our defense capabilities. And I thank the gentleman from Arizona for yielding.

Mr. ISSA. Mr. Chairman?

Mr. FLAKE. I yield to the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you. I just want to point out one more flaw in this amendment. I know it is well intentioned, but in reviewing it, I see where clearly pepper spray, tear gas, rubber bullets, and others intend to be nonlethal law enforcement, clearly operating under the color of law but designed to inflict pain for the intended purpose of limiting the lethal use that might otherwise occur, without a doubt would fall under any reasonable interpretation. I am not sure that a 45-caliber automatic would not equally fall under this. I have no question that this is overly broad and in its current form cannot go forward. Thank you for yielding.

Mr. BLUMENAUER. Mr. Chairman?

Mr. FLAKE. Just to finish with my time, let me just say, I think that the point that Mr. Houghton made and made effectively is that this is a problem that we have throughout these amendments. We are just getting into areas that the export-control regime has never gotten into before, that are going so broad, and that is why

the Administration is opposing it, is opposing these amendments. I hope that we can stay closer to the Senate version.

Mr. SMITH OF NEW JERSEY. Mr. Chairman?

Chairman HYDE. The gentleman from New Jersey, Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you, Mr. Chairman. First of all, I want to say I strongly support the gentleman's amendment. I think it is a good one. When it comes to torture, whether we talk about micromanaging or macromanaging or any kind of managing, frankly, I do not think we can do enough.

I think some of us may not fully appreciate how torture is on the rise, especially in repressive regimes. With trade becoming increasingly divorced from anything whatsoever to do with human rights, it seems to me, we have done this time and time again—China, PNTR, all of these issues. If we cannot narrowly single out an area—and to the gentleman who just spoke, his comments about “overly broad,” the language says, after it names some specific items like electroshock stun belts, thumb cuffs, and items specifically designed as implements of torture—it makes it very clear these are items that are designed to torture. The language then provides, “as determined by the Secretary,” so it gives some flexibility to the Secretary.

Mr. ISSA. Would the gentleman yield?

Mr. SMITH [continuing]. In a second. The Secretary would determine what would be included, and what would be precluded. The clear intent is to include obviously (by name) those things that are mentioned in the amendment, but I think this language is very clear. Let me also say to my friends, we have had hearings on torture. There are 400,000 people in the United States who have been victims of torture overseas who walk our streets, the walking wounded.

In other countries the number far exceeds that number, particularly in a lot of Warsaw Pact countries, and particularly in a place like China, where if you are arrested, you can take it to the bank you are going to be tortured. If you are Falun Gong, Catholic, Protestant, Uighurs, Buddhists, or if you are a petty criminal, you will make your confession under the duress of torture. It seems to me that this kind of export control, which very clearly stipulates those types of instruments—

Chairman HYDE. Will the gentleman yield?

Mr. SMITH. I will be happy to yield.

Chairman HYDE. Not only does it stipulate these types of instruments, but it is confined—it says, “if the government of such country or any group supported by or acting on behalf of such government has repeatedly engaged in acts of torture.” So it is not every government. We are not talking about Great Britain. We are talking about countries that have repeatedly engaged in acts of torture. So you have a proscription on the type of torture weapon and the type of country we are talking about.

Now, if you want to vote to sell those things, if you think all businessmen are great and on the square, I do not know who is selling the dope around here, but there are people who are not necessarily members of the Rotary in good standing in the world of commerce. But be that as it may, this is a good amendment. It talks about the countries that repeatedly, not occasionally or spo-

radically, repeatedly engage in acts of torture. So thank you for yielding, and you have some more time if you want.

Mr. ISSA. Thank you for yielding. I might point out specifically on leg irons, leg irons are required when a dangerous criminal, such as a murderer such as Timothy McVeigh, comes into a Federal court. We are talking about at least one named item that is used every day in probably every state, certainly in my state of California, for prisoners when being transported.

So we are describing a torture means which we use, which the gentleman from Arizona sees his famous sheriff every day using on these folks. So I think we have to be very careful because we have gone well intended down a road where we are describing ourselves as a human-rights offender by describing that.

Chairman HYDE. Would the gentleman yield?

Mr. SMITH. I would be happy to yield to the Chairman. You are absolutely right. I have seen prisoners at National Airport with leg irons on and glad they had them on because I was sitting next to them. But you must combine that with a country that repeatedly engages in acts of torture. I am not so comfortable about that. And the gentleman ought to not to be either. I thank the gentleman.

Mr. SMITH. Mr. Chabot?

Mr. CHABOT. If the gentleman would yield, I will be very brief. I am inclined to support the amendment, but I just have one question. The gentleman from California raised the issue about a 45 caliber. We do not want to get into the whole gun issue, but is anybody suggesting that a gun necessarily could be considered as a category that would be included here?

Mr. LANTOS. Guns are in no way involved in this legislation.

Mr. CHABOT. That is what I would have assumed. I just wanted to make sure.

Mr. LANTOS. That is correct.

Mr. CHABOT. Thank you.

Chairman HYDE. Is there further discussion?

[No response.]

Chairman HYDE. The question occurs on the Lantos-Hyde amendments numbers 15 and 21 en bloc, as modified. All of those in favor say aye.

[A chorus of ayes.]

Chairman HYDE. Opposed, nay.

[A chorus of noes.]

Mr. LANTOS. Mr. Chairman, I request a recorded vote.

Chairman HYDE. The gentleman shall be acceded to. The gentlelady will call the roll.

Ms. BLOOMER. Mr. Gilman?

[No response.]

Ms. BLOOMER. Mr. Leach?

[No response.]

Ms. BLOOMER. Mr. Bereuter?

Mr. BEREUTER. Aye.

Ms. BLOOMER. Mr. Bereuter votes yes. Mr. Smith?

Mr. SMITH. Aye.

Ms. BLOOMER. Mr. Smith votes yes. Mr. Burton?

[No response.]

Ms. BLOOMER. Mr. Gallegly?

[No response.]
Ms. BLOOMER. Ms. Ros-Lehtinen?
[No response.]
Ms. BLOOMER. Mr. Ballenger?
Mr. BALLENGER. Aye.
Ms. BLOOMER. Mr. Ballenger votes yes. Mr. Rohrabacher?
Mr. ROHRABACHER. Aye.
Ms. BLOOMER. Mr. Rohrabacher votes yes. Mr. Royce?
Mr. ROYCE. Yes.
Ms. BLOOMER. Mr. Royce votes yes. Mr. King?
[No response.]
Ms. BLOOMER. Mr. Chabot?
Mr. CHABOT. Aye.
Ms. BLOOMER. Mr. Chabot votes yes. Mr. Houghton?
Mr. HOUGHTON. No.
Ms. BLOOMER. Mr. Houghton votes no. Mr. McHugh?
[No response.]
Ms. BLOOMER. Mr. Burr?
[No response.]
Ms. BLOOMER. Mr. Cooksey?
[No response.]
Ms. BLOOMER. Mr. Tancredo?
Mr. TANCREDO. No.
Ms. BLOOMER. Mr. Tancredo votes no. Mr. Paul?
Mr. PAUL. No.
Ms. BLOOMER. Mr. Paul votes no. Mr. Smith?
Mr. SMITH. No.
Ms. BLOOMER. Mr. Smith votes no. Mr. Pitts?
Mr. PITTS. Yes.
Ms. BLOOMER. Mr. Pitts votes yes. Mr. Issa?
Mr. ISSA. No.
Ms. BLOOMER. Mr. Issa votes no. Mr. Cantor?
Mr. CANTOR. No.
Ms. BLOOMER. Mr. Cantor votes no. Mr. Flake?
Mr. FLAKE. No.
Ms. BLOOMER. Mr. Flake votes no. Mr. Kerns?
Mr. KERNS. No.
Ms. BLOOMER. Mr. Kerns votes no. Ms. Davis?
[No response.]
Ms. BLOOMER. Mr. Lantos?
Mr. LANTOS. Yes.
Ms. BLOOMER. Mr. Lantos votes yes. Mr. Berman?
[No response.]
Ms. BLOOMER. Mr. Ackerman?
Mr. ACKERMAN. Aye.
Ms. BLOOMER. Mr. Ackerman votes yes. Mr. Faleomavaega?
[No response.]
Ms. BLOOMER. Mr. Payne?
Mr. PAYNE. Yes.
Ms. BLOOMER. Mr. Payne votes yes. Mr. Menendez?
[No response.]
Ms. BLOOMER. Mr. Brown?
[No response.]
Ms. BLOOMER. Ms. McKinney?

[No response.]
Ms. BLOOMER. Mr. Hilliard?
Mr. HILLIARD. Yes.
Ms. BLOOMER. Mr. Hilliard votes yes. Mr. Sherman?
[No response.]
Ms. BLOOMER. Mr. Wexler?
[No response.]
Ms. BLOOMER. Mr. Davis?
[No response.]
Ms. BLOOMER. Mr. Engel?
Mr. ENGEL. Yes.
Ms. BLOOMER. Mr. Engel votes yes. Mr. Delahunt?
[No response.]
Ms. BLOOMER. Mr. Meeks?
Mr. MEEKS. Yes.
Ms. BLOOMER. Mr. Meeks votes yes. Ms. Lee?
Ms. LEE. Yes.
Ms. BLOOMER. Ms. Lee votes yes. Mr. Crowley?
[No response.]
Ms. BLOOMER. Mr. Hoeffel?
Mr. HOEFFEL. Yes.
Ms. BLOOMER. Mr. Hoeffel votes yes. Mr. Blumenauer?
[No response.]
Ms. BLOOMER. Ms. Berkley?
Ms. BERKLEY. Yes.
Ms. BLOOMER. Ms. Berkley votes yes. Ms. Napolitano?
Ms. NAPOLITANO. Yes.
Ms. BLOOMER. Ms. Napolitano votes yes. Mr. Schiff?
Mr. SCHIFF. Aye.
Ms. BLOOMER. Mr. Schiff votes yes. Ms. Watson?
Ms. WATSON. Yes.
Ms. BLOOMER. Ms. Watson votes yes. Mr. Hyde?
Chairman HYDE. Yes.
Ms. BLOOMER. Mr. Hyde votes yes.
Chairman HYDE. Mr. Burton?
Mr. BURTON. Yes.
Ms. BLOOMER. Mr. Burton votes yes.
Mr. COOKSEY. Mr. Chairman, how am I recorded?
Chairman HYDE. Mr. Cooksey?
Mr. COOKSEY. Please record me as a "no" vote.
Ms. BLOOMER. Mr. Cooksey votes no.
Chairman HYDE. Mr. Leach?
Mr. LEACH. Aye, please. I would vote aye.
Chairman HYDE. Mr. Leach votes aye.
Ms. BLOOMER. Thank you.
Chairman HYDE. Mr. Gilman?
Mr. GILMAN. Aye.
Ms. BLOOMER. Mr. Gilman votes yes.
Mr. TANCREDO. Mr. Chairman?
Chairman HYDE. Who seeks recognition?
Mr. TANCREDO. Mr. Chairman?
Chairman HYDE. Mr. Tancredo.
Mr. TANCREDO. Mr. Chairman, I just ask how I am recorded.
Chairman HYDE. Melodically.

Mr. TANCREDO. Thank you—how I am recorded?

Ms. BLOOMER. Mr. Tancredo voted no.

Mr. TANCREDO. I wish to be recorded as voting aye.

Ms. BLOOMER. Mr. Tancredo votes yes.

Chairman HYDE. Have all voted?

Ms. DAVIS. Mr. Chairman?

Chairman HYDE. Ms. Davis.

Ms. DAVIS. Aye.

Ms. BLOOMER. Ms. Davis votes yes.

Chairman HYDE. The clerk will report.

Ms. BLOOMER. On this vote there were 25 ayes and 8 noes.

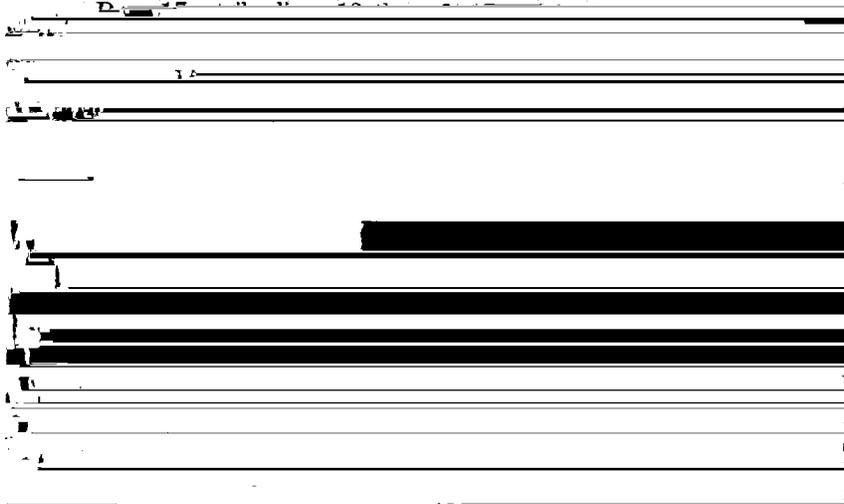
Chairman HYDE. And the amendments are agreed to. Are there further amendments? What is the next amendment? Amendment number 5. The clerk will report amendment number 5, authored by Mr. Lantos and Mr. Hyde.

Ms. BLOOMER. Amendment offered by Mr. Hyde and Mr. Lantos. Page 17, strike lines 13 through 17 and insert the following—

[The amendment referred to follows:]

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde /Mr. Lantos

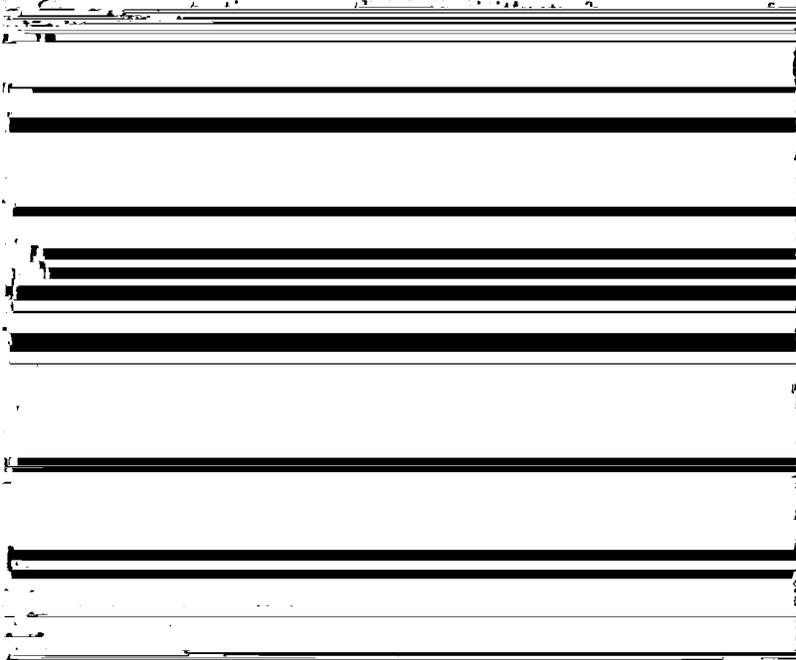


following:

- 1 (c) END USE AND END USER CONTROLS.—
- 2 (1) GENERAL AUTHORITY.—(A) Notwith-
- 3 standing any other provision of this Act, controls
- 4 may be imposed, based on the end use or end user,
- 5 on the export of any item, that could contribute to
- 6 the proliferation of weapons of mass destruction or
- 7 the means to deliver them.
- 8 (B) The President shall seek to strengthen mul-
- 9 tilateral cooperation to identify more effectively end
- 10 users of concern

1 retary of State, determines that there is a significant
2 risk that—

3 (A) the end user designated to receive such
4 item is involved in a program or activity for the
5 design, development, manufacture, stockpiling,



7 mass destruction or the means to deliver such
8 a weapon and is in a country that is not an ad-
9 herent to a multilateral export control regime
10 controlling such weapon or means of delivery,
11 unless the Secretary, with the concurrence of
12 the Secretary of Defense and the Secretary of
13 State, and in consultation with the intelligence
14 agencies and the head of any other department

1 (3) DEFINITION.—For purposes of this sub-
2 section, an “adherent to a multilateral export control
3 regime” is—

4 (A) a country that is a member of a multi-
5 lateral export control regime;

6 (B) a country that, pursuant to an inter-
7 national understanding to which the United
8 States is a party, controls exports in accordance
9 with relevant criteria and standards of a multi-
10 lateral export control regime; or

11 (C) a major non-NATO ally that, pursuant
12 to its national legislation, controls exports in
13 accordance with such criteria and standards.

Chairman HYDE. Without objection, further reading of the amendment is dispensed with, and the Chair grants himself 5 minutes to explain the amendment.

This amendment includes language that is virtually identical to that contained in the bill providing for the codification of the Enhanced Proliferation Control Initiative, EPCI, or catch-all standard providing for controls to be imposed based on the end use and end user for the export of any item that could contribute to the proliferation of weapons of mass destruction or the means to deliver them. Controls may be imposed, notwithstanding any other provision of the act, providing the President with the widest possible flexibility and discretion in their implementation.

The amendment directs the President to strengthen multilateral cooperation among all countries with similar EPCI standards to identify more effectively end users of concern. It also instructs the Secretary to establish and maintain a list of items to be controlled on a data base listing end users of concern, which could be used by exporters to screen prospective end users.

The amendment further employs for a presumption of denial for the export of any item under certain circumstances. Specifically, it provides for the resumption of denial if the end user designated to receive such item is involved in a program or activity developing weapons of mass destruction or the means to deliver them and is in a country that is not a member of a regime controlling such weapons or the means to deliver them unless the Secretary, together with the Secretaries of State and Defense, determine that the export would not make a material contribution to the program or activity.

The amendment similarly provides for a presumption of denial for the export of any item which would make, in the determination of the Secretary with the concurrence of Secretaries of State and Defense, a contribution to the military capabilities of a country that would undermine regional stability or otherwise adversely affect the national security of the U.S., a NATO ally, or a major non-NATO ally.

Adoption of this amendment would improve the ability of our export-control system to meet the security and proliferation challenges it faces in the decades to come by establishing a clear standard designed to protect U.S. national interests. First, it provides the statutory basis for the Administration to keep its Enhanced Proliferation Control Initiative, EPCI, in place against the export of any item for a program or activity of an end use or user that is directly involved in the development of weapons of mass destruction or the means to deliver them.

Second, it calls on the President to improve multilateral control efforts to identify suspect end users and to harmonize the standards and policies for other comparable proliferation regime systems being put in place by many of our trading partners. And third, it also directs the Administration to increase the transparency of the EPCI and to establish and maintain a list of items being controlled on a data base, including end users of concern.

Finally, the amendment provides for a presumption of denial for the export of an item to end users involved in a program or activity designed to produce weapons of mass destruction or the means to

deliver them unless the Secretary, along with Secretaries of State and Defense, determines that the item would not make a material contribution to this program or activity.

It further stipulates, there should be a presumption of denial for the export of an item to an end user if it would make a contribution to the military capabilities of a country so as to undermine regional stability or to damage U.S. national security or that of a NATO ally or a major non-NATO ally.

The adoption of this amendment will ensure that our export-control policy is built on a solid framework targeting items being procured by suspect end users determined to engage in the development of weapons of mass destruction or military capabilities designed to damage U.S. interests or those of our closest allies. The Chair recognizes Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman. This is one of our key amendments which has my unequivocal support. Our amendment deals with the issue of exports to end users who are involved in destabilizing activities.

The amendment changes the bill in two ways. First, it ensures that the President will cooperate with other countries in identifying potentially dangerous buyers of American dual-use products, and it requires the President to create a data base of such buyers. This will improve multilateral controls and foster transparency for exporters and does not represent a substantive change.

The amendment also establishes in general a denial of an export to a buyer who is involved in programs developing weapons of mass destruction or related missile programs if the export could make a material contribution to those programs. The same guidance applies if the export would undermine regional stability or undermine the United States, our NATO allies, or our major non-NATO allies.

This amendment is similar to current practice and does not create a complete prohibition. It merely says that such items generally should not be exported. If we are serious about stemming proliferation and ensuring regional stability, we should adopt this amendment, and I strongly urge my colleagues to do so. Thank you, Mr. Chairman.

Mr. MENENDEZ. Mr. Chairman.

Chairman HYDE. Mr. Menendez.

Mr. MENENDEZ. Thank you. Mr. Chairman, I vigorously oppose this amendment, and now that we have gotten past the torture, we can now look at the crux of what this bill is really all about. And in that regard I think that I would ask my colleagues to seriously think which avenue do you want to pursue.

Do you want to pursue an avenue that balances the great national-security interests that we have along with the commercial interests that we have in a world in which, to think that the United States is the sole possessor of a wide variety of technology and products and by hoarding it and keeping it away from the rest of the world, we can be superior? If you believe that is the case, then you can vote with Mr. Lantos and Mr. Hyde on these amendments. However, the reality of the world is that it is much different.

One of the experts in this field, who was a former member of the Reagan Administration, said the following:

“In other words, much of the technology the United States is most anticipating leveraging to maintain military dominance, information-related technology developed largely in the commercial sector, is that which DOD is least capable of denying its potential competitors.”

And he went also on to say,

“During most of the Cold War, the United States enjoyed a near monopoly on the development of and access to advanced military technology and could to a larger degree deny other nations access to such technology in order to maintain a wide military capability gap between itself and its potential adversaries. No longer. It is now likely that a majority of militarily useful technology will eventually be available commercially outside the United States as a result of many factors, all of which are direct manifestations of the globalization phenomenon.”

That, my friends, is the reality that we face today, and those are the words of Donald Hicks, Under Secretary of Defense during the Reagan Administration.

Now, in addition to what an entity uses this for at the end, as end user controls, the amendment would include a presumption of denial, authorized for the first time in law. That is a term of art. In the law when there is a presumption that goes against you, you must overcome the presumption. So there is, you know, a strike before you ever get up to bat.

So there is a presumption of denial for certain exports. Instead of allowing flexibility on a case-by-case basis, the amendment requires a denial of exports for a series of reasons. The amendment requires concurrence of the Secretaries of Commerce, of State, of Defense, and this greatly expands the Secretary of State’s role in national-security-control matters.

The Export Administration Act of 1979 that we have been operating under never gave, at the height of the Cold War, the Secretary of State concurrence even for matters relating to foreign-policy controls. The Administration did not believe they needed this additional grant of authority for either the Secretary of State or the Secretary of Defense and, therefore, did not request the authority.

I urge my colleagues to look at page two of the amendment that is before you and look at the language under [a] and continue to go through it. In addition to what I have just described, it says:

“In addition to the concurrence of the Secretary of State with the concurrence of the Secretary of Defense, and the Secretary of State and in consultation with the intelligence agencies and the head of any other department or agency of the United States that the Secretary considers appropriate, determines that such export would not make a material contribution. . . .”

By the way, what is a “material contribution,” as defined here, to such program or activity? This is huge, and in essence, it is clearly an action to undermine the very basis of having a modern-day Export Administration Act that balances national security

along with commercial interests, and I strongly urge my colleagues to oppose the amendment. I yield back the balance of my time.

Chairman HYDE. Mr. Houghton?

Mr. HOUGHTON. Mr. Chairman, I would like to ride on that concept for a moment. You know, it has been my experience over the years, because I spent so much of my time in business, that when you get too many people in the Administration, particularly those three key agencies, and particularly the Department of Defense, that their job is really to protect us under all circumstances. Nothing goes out of this country. And what happens, then, is that something which is a perfectly normal technological evolution that could be sold, could be used to develop markets, is stifled. I have had this happen to me personally over and over and over again.

Now, look, I was in the military, and I understand the importance of military security, but when you get so many different bureaucratic groups here, their responsibility is to their boss, and their boss will try to absolutely make sure every detail, minute detail, of the security of the United States is upheld. However, when you are in business, your boss is your customer, and what you are trying to do is to reach out.

So the motivations are entirely different here. And so you have security on one hand, and you have economic opportunity on the other, and I am afraid economic opportunity under these conditions is going to be the worst for wear.

Mr. BLUMENAUER. Would the gentleman yield? Would the gentleman yield?

Mr. HOUGHTON. Yes.

Mr. BLUMENAUER. If I could just follow up on that, because I am struck by what you are talking about in terms of the structure and who is responsible and how people are going to err on the side of caution.

We have just finished a discussion that I had great difficulty tracking in the context of the Export Control Act because leg irons are going to be available around the world, and somehow we are going to have American bureaucrats who are now going to be dealing with that. It is something that is not going to stop torture. This is taking it to two levels higher, I guess, in terms of abstraction, where we have greater complexity, we have more opportunities for more areas of the bureaucracy to be erring on the side of caution, not wanting to be identified with something that could potentially harm the United States, taking the most restrictive definition, while the rest of the world marches on. And men and women who are trying to engage in perfectly legitimate business practices are going to wait for us to work this through, and in the meantime things that will make a difference to the security of this country and changing things that would really make a difference, whether it is human rights or nonproliferation, are going to get short shrift.

If I understand the gentleman correctly, I really appreciate his talking about the dynamic that we are throwing onto the bureaucracy, what is going to happen politically and practically, and I strongly identify with the gentleman's comments, and I appreciate them.

Mr. HOUGHTON. Thank you very much.

Chairman HYDE. The Chair recognizes Mr. Berman for 5 minutes.

Mr. BERMAN. Mr. Chairman, what I want to do with this law, over and above my amendments to this law, is I want to see a mechanism which maintains the primacy of the Secretary of Commerce in the export-licensing decisions which gives the President a pretty unfettered right to override anybody if he thinks that national security would be negatively impacted.

I think that was taken care of by the Chairman and Ranking Member's earlier amendment—that provides a forcing mechanism when you are dealing with mass marketing. Items in the mass market are items which are available for foreign sources in the same quality and the same quantity that provides a mechanism by which American exporters can force the bureaucracy in a timely manner to confront that question and decontrol items for which the purpose of the control may be noble, but the logic of the control is only to hurt American exporters who are not keeping anything out of the hands of anybody else.

So in that framework I look at this amendment, and I, in the context of all of the conversations, try to hear the argument of my friend from New Jersey. And there sure are a lot of people involved in this amendment.

But the one argument that I do not understand, and I want to make sure I am reading it right, nothing goes on this list unless the Secretary of Commerce wants it to go on this list as to that end user. In other words, this is not giving Defense or the area desk officer for the CIA or somebody in the munitions-licensing arm of the State Department a chance to veto, to put something on the list. All it gives them is a chance to veto something the Secretary of Commerce decides to put on this list so that the presumption of denial applies to no items as a result of this amendment that the Secretary of Commerce has not decided, in the context of the proliferation of weapons of mass destruction and the means to deliver them, that there is a significant risk that that item in the hands of that end user will contribute to that kind of proliferation.

In other words, while it looks quickly like this gets a whole bunch of people involved, this still leaves it in the hands of the Secretary of Commerce. He triggers this process so that nothing fundamentally is changed except—what we really have said is—where something is determined by the Secretary to be a substantial risk in the hands of that end user to proliferate weapons of mass destruction or missiles, there is a presumption of denial.

The bureaucracy should know that is implementing this system that in those situations they should start out planning to deny that license unless it is either insignificant or somebody else has decided not to do it. In other words, the fear that, I think, I share with Mr. Menendez about giving Defense veto is not true in this amendment because Defense only vetoes what the Secretary of Commerce could put on.

Mr. HOUGHTON. Would the gentleman yield?

Mr. BERMAN. Sure.

Mr. HOUGHTON. You know, from a legal standpoint, I must assume that that is right, but from a practical standpoint, it has not worked out that way. In many cases you get burned. There is

something which is a little tender. You pull in the Secretary of Defense. You pull in the Secretary of State in order to buttress your case because you do not want to be out there all by yourself, and I have seen that happen.

Mr. BERMAN. Who is "you"? Who is "you"?

Mr. HOUGHTON. "You" is the Secretary of Commerce.

Mr. BERMAN. Well, if the Secretary of Commerce wants to deny a license because it contributes significantly to the proliferation of weapons of mass destruction in that end user, more power to him. But he is the triggering mechanism. I thought for the argument we were worried the Secretary of Defense gets to get involved in this. If the Secretary of State gets involved, he consults him, but in the end he gets to make the decision.

That was what I thought the purpose of the Senate bill and the gentleman's position has been: Keep the Secretary of Commerce the primary operator here. Do not incorporate a veto of his decisions by somebody else. In the end, the legal thing is the most important thing because that is where the power is. If he wants to bring in the Secretary of Defense, we do not need a law to do that.

Mr. MENENDEZ. Would the gentleman yield?

Mr. BERMAN. Sure.

Mr. MENENDEZ. I would point out to the gentleman that if you are on the list, but you can never export, then the consequence of being on the list is not as great as one would seem. You have a mechanism here in which there must be concurrence by Commerce, Defense, and State, and consultation and a wide variety of others in which there are no definitions that control the parameters of the times when that is fully invoked, when it begins, when it ends. And so it seems to me that the gentleman's desire, which I share, as you enunciated, is still complicated by this amendment in an unnecessary way.

Mr. BERMAN. If I could just reclaim my time, though, I do not think it requires their concurrence. If the Secretary of Commerce says, I do not think boots, you know, shoes to the Iranian nuclear weapons program is an item that should be on the control list because that is not going to have a substantial—forgetting the fact that we have an embargo on Iran—but the shoes to whoever the potential bad end user is should not be on that list, the Secretary of Defense can, you know, toot his horn all he wants; it is not on the list. There is no presumption of denial. The Secretary of Commerce can grant that license. That is my point.

It does not require concurrence. It requires concurrence before you can put them on the list. In other words, to put them on the list requires concurrence, not to keep them off the list. So I do not think it is such a big deal in that sense.

Chairman HYDE. The gentleman's time has expired. The Chair recognizes himself for 5 minutes.

This is a very good amendment, in my judgment, and I would like, rather than talk about it, to read it. "Notwithstanding any other provision of this act, controls may be imposed based on the end use or end user on the export of any item—" What do you mean, "any item," what? "—that could contribute to the proliferation of weapons of mass destruction or the means to deliver them."

That is not a pencil. That is not a Nintendo game. We are talking about the mushroom cloud. "Weapons of mass destruction or the means to deliver them." That is a matter of ultimate seriousness.

Now, what about these things? This amendment says there shall be a presumption of denial. Now, a presumption is not final. It is rebuttable, but there shall be a presumption of denial for export of an item if the Secretary—

Mr. BERMAN. An item on the list he has already decided.

Chairman HYDE. Correct. If the Secretary, meaning the Secretary of Commerce, with the concurrence of the Secretary of Defense and the Secretary of State—this is not going to be done in any halfway manner—determines there is a significant risk that the end user designated to receive such an item is involved in a program having to do with weapons of mass destruction.

Now that is what this does. Yes, I suppose it is awkward for some exporters to worry about, but I worry about weapons of mass destruction. And I think part of our job—forgive me, I am not preaching to anybody—part of our job is not only to see that commerce flows merrily along, but we take care to provide for the common defense.

I would like to remind those Members who have been around for a few years on this Committee that back in 1996 we last passed an EAA authorization that contained virtually the same language that we are talking about here, only a little tougher.

"General prohibition;" this is from page 132 of the print on the Omnibus Export Administration Act of 1995. "Notwithstanding any other provision of this title, the export of commodities or technology shall be prohibited—" we did not just get on a list and have a presumption of denial; they shall be prohibited—that is what we did in '95 "—if the ultimate consignee—" that is a euphemism for end user "—is a program or activity, et cetera, testing or acquisition of weapons of mass destruction."

Now, we are talking about serious stuff. We are not talking about rifles or gatling guns; we are talking about weapons of mass destruction, and we are trying to have some reasonable control that requires three Secretaries to concur. And to me, this is de minimis protection of our country, so, I think, it is a good amendment, and does anyone else want to talk?

[No response.]

Chairman HYDE. If not, the question occurs on the amendment number 5. All of those in favor say aye.

[A chorus of ayes.]

Chairman HYDE. Opposed, nay.

[A chorus of noes.]

Mr. LANTOS. On that, Mr. Chairman, I request a recorded vote.

Chairman HYDE. A rollcall shall be called.

Ms. BLOOMER. Mr. Gilman?

[No response.]

Mr. LEACH. Aye.

Ms. BLOOMER. Mr. Leach votes yes. Mr. Bereuter?

Mr. BEREUTER. Aye.

Ms. BLOOMER. Mr. Bereuter votes yes. Mr. Smith?

Mr. SMITH. Aye.

Ms. BLOOMER. Mr. Smith votes yes. Mr. Burton?
[No response.]
Ms. BLOOMER. Mr. Gallegly?
[No response.]
Ms. BLOOMER. Ms. Ros-Lehtinen?
[No response.]
Ms. BLOOMER. Mr. Ballenger?
Mr. BALLENGER. Yes.
Ms. BLOOMER. Mr. Ballenger votes yes. Mr. Rohrabacher?
Mr. ROHRABACHER. Yes.
Ms. BLOOMER. Mr. Rohrabacher votes yes. Mr. Royce?
[No response.]
Ms. BLOOMER. Mr. King?
[No response.]
Ms. BLOOMER. Mr. Chabot?
Mr. CHABOT. Aye.
Ms. BLOOMER. Mr. Chabot votes yes. Mr. Houghton?
Mr. HOUGHTON. No.
Ms. BLOOMER. Mr. Houghton votes no. Mr. McHugh?
[No response.]
Ms. BLOOMER. Mr. Burr?
Mr. BURR. Yes.
Ms. BLOOMER. Mr. Burr votes yes. Mr. Cooksey?
[No response.]
Ms. BLOOMER. Mr. Tancredo?
Mr. TANCREDO. Yes.
Ms. BLOOMER. Mr. Tancredo votes yes. Mr. Paul?
Mr. PAUL. No.
Ms. BLOOMER. Mr. Paul votes no. Mr. Smith?
Mr. SMITH. No.
Ms. BLOOMER. Mr. Smith votes no. Mr. Pitts?
Mr. PITTS. Yes.
Ms. BLOOMER. Mr. Pitts votes yes. Mr. Issa?
[No response.]
Ms. BLOOMER. Mr. Cantor?
[No response.]
Ms. BLOOMER. Mr. Flake?
Mr. FLAKE. No.
Ms. BLOOMER. Mr. Flake votes no. Mr. Kerns?
Mr. KERNS. Yes.
Ms. BLOOMER. Mr. Kerns votes yes. Ms. Davis?
[No response.]
Ms. BLOOMER. Mr. Lantos?
Mr. LANTOS. Aye.
Ms. BLOOMER. Mr. Lantos votes yes. Mr. Berman?
Mr. BERMAN. Aye.
Ms. BLOOMER. Mr. Berman votes yes. Mr. Ackerman?
[No response.]
Ms. BLOOMER. Mr. Faleomavaega?
[No response.]
Ms. BLOOMER. Mr. Payne?
Mr. PAYNE. No.
Ms. BLOOMER. Mr. Payne votes no. Mr. Menendez?
Mr. MENENDEZ. No.

Ms. BLOOMER. Mr. Menendez votes no. Mr. Brown?
 [No response.]
 Ms. BLOOMER. Ms. McKinney?
 [No response.]
 Ms. BLOOMER. Mr. Hilliard?
 Mr. HILLIARD. Aye.
 Ms. BLOOMER. Mr. Hilliard votes yes. Mr. Sherman?
 [No response.]
 Ms. BLOOMER. Mr. Wexler?
 [No response.]
 Ms. BLOOMER. Mr. Davis?
 [No response.]
 Ms. BLOOMER. Mr. Engel?
 Mr. ENGEL. Yes.
 Ms. BLOOMER. Mr. Engel votes yes. Mr. Delahunt?
 [No response.]
 Ms. BLOOMER. Mr. Meeks?
 [No response.]
 Ms. BLOOMER. Ms. Lee?
 [No response.]
 Ms. BLOOMER. Mr. Crowley?
 Mr. CROWLEY. Yes.
 Ms. BLOOMER. Mr. Crowley votes yes. Mr. Hoeffel?
 Mr. HOEFFEL. Yes.
 Ms. BLOOMER. Mr. Hoeffel votes yes. Mr. Blumenauer?
 Mr. BLUMENAUER. No.
 Ms. BLOOMER. Mr. Blumenauer votes no. Ms. Berkley?
 Ms. BERKLEY. Yes.
 Ms. BLOOMER. Ms. Berkley votes yes. Ms. Napolitano?
 Ms. NAPOLITANO. Yes.
 Ms. BLOOMER. Ms. Napolitano votes yes. Mr. Schiff?
 Mr. SCHIFF. Aye.
 Ms. BLOOMER. Mr. Schiff votes yes. Ms. Watson?
 Ms. WATSON. Yes.
 Ms. BLOOMER. Ms. Watson votes yes. Mr. Chairman?
 Chairman HYDE. Yes.
 Ms. BLOOMER. Mr. Hyde votes yes.
 Chairman HYDE. Mr. Gallegly?
 Mr. GALLEGLY. Yes.
 Ms. BLOOMER. Mr. Gallegly votes yes.
 Chairman HYDE. Mr. Royce?
 Mr. ROYCE. Yes.
 Ms. BLOOMER. Mr. Royce votes yes.
 Chairman HYDE. Mr. Burton?
 Mr. BURTON. Aye.
 Ms. BLOOMER. Mr. Burton votes yes.
 Chairman HYDE. Ms. Lee?
 Ms. BLOOMER. Ms. Lee has not voted.
 Ms. LEE. Yes.
 Ms. BLOOMER. Ms. Lee votes yes.
 Chairman HYDE. Ms. Davis?
 Ms. DAVIS. Aye.
 Ms. BLOOMER. Ms. Davis votes yes.
 Chairman HYDE. Mr. Meeks?

Mr. MEEKS. I vote aye.

Chairman HYDE. How is Mr. Meeks recorded?

Ms. BLOOMER. Mr. Meeks has not voted. He passed.

Mr. MEEKS. I vote aye.

Ms. BLOOMER. Mr. Meeks votes yes.

Chairman HYDE. Mr. Ackerman? You should be recorded aye.
Mr. Brown?

Mr. BROWN. Aye.

Ms. BLOOMER. Mr. Brown votes yes.

Chairman HYDE. The Chairman Emeritus?

Ms. BLOOMER. Mr. Gilman?

Chairman HYDE. How do you vote, Mr. Gilman?

Mr. GILMAN. Yes.

Ms. BLOOMER. Mr. Gilman votes yes.

Chairman HYDE. All have voted who wish. The clerk will report.

Ms. BLOOMER. On this vote there were 30 ayes and 7 noes.

Chairman HYDE. And the amendment is agreed to. The Committee will stand in recess until 4 p.m. There are two votes on the floor. We will be back at four.

[Recess]

Chairman HYDE. The Committee will be in order.

I have an amendment at the desk, number seven. The clerk will report.

Ms. BLOOMER. Amendment offered by Mr. Hyde. Page 18, insert the following after line 14.

[The amendment referred to follows:]

AMENDMENT TO H.R. 2581
OFFERED BY Mr. Hyde

Page 18, insert the following after line 14:

1 (e) PRESUMPTION OF DENIAL ON CERTAIN LI-
2 CENSES.—Notwithstanding any other provision of law,
3 when a license is required for export to any country of
4 any item on the National Security Control List for any
5 reason specified in subsection (b), there shall be a pre-
6 sumption of denial for the export of such item if there
7 is a significant risk that—

8 (1) such item would contribute to the nuclear,
9 chemical, or biological weapons capabilities of such
10 country or the capabilities of such country to deliver
11 such weapons;

12 (2) such item would otherwise contribute to the
13 military capabilities of such country so as to under-
14 mine regional stability or otherwise prove detri-
15 mental to the national security of the United States,
16 a NATO ally, or major non-NATO ally;

17 (3) such item would likely be used or diverted
18 to a use or destination not authorized by the license
19 or United States policy; or

1 (4) the export of such item would otherwise ma-
2 terially and adversely affect the national security in-
3 terests of the United States.

Chairman HYDE. Without objection further reading of the amendment is dispensed with. It is in the process of being disseminated. The Chair grants himself 5 minutes to explain the amendment.

This amendment provides for a presumption of denial for items on the National Security Control List under certain circumstances. This would require a presumption of denial for the export of any item on the National Security Control List requiring a license to any country so long as there is a significant risk that the item would contribute to the nuclear, chemical or biological weapons capabilities of that country or the means to deliver such weapons, or contribute to the military capabilities of such countries undermining regional stability, or be likely to be used by or diverted to an unauthorized destination, or adversely affect U.S. national security interests.

This amendment provides clear policy guidance to the Secretary in the licensing process where key U.S. national interests are at stake. It is designed to be used sparingly and only in those circumstances where proliferation and national security risks pose a threat to the U.S. or its allies.

Now S. 149 as presently drafted contains numerous policy prescriptions and objectives that the Secretary must take into account in the export control process, incorporating list making and license review. But it fails to give the Secretary clear and consistent direction on how these objectives should be put into practice in deciding whether or not a license should be granted for any item on the National Security Control List.

The adoption of this amendment would ensure that when an item from the control list requires a license the Secretary pay very careful attention to the issues of regional stability and national security threats, including the proliferation of weapons of mass destruction. The presumption of denial for any such license would come into play only when a determination is made that the export of an item would pose a significant risk to vital U.S. interests.

The amendment clearly spells out those interests and concerns which are at the heart of our national security and defense policy.

Its adoption by the Committee would help ensure that export controls play a supporting role as well when and where appropriate. It is important to keep in mind what this amendment is not intended to do and what it is intended to do.

It is not a blanket policy of denial. It is not an excuse to say no to all license applications. And it is not a prescription for a return to the gridlock in our export licensing system.

It is intended to be the basis for a very restrictive policy for those key items already requiring a license, and then only when the export of these items poses a significant risk to the national security interests of the U.S. and its allies.

The amendment is designed to help build an export control system that can lead to security and competitive challenges of the 21st Century.

Mr. Lantos?

Mr. LANTOS. Mr. Chairman. I strongly support the amendment and I urge all of my colleagues to vote for it.

Chairman HYDE. Thank you.

Mr. Berman?

Mr. BERMAN. Mr. Chairman, as I read this amendment, Items 1, 2, 3, 4 are each basis for which the presumption, any finding of one would attach a presumption of denial. Is that correct?

Chairman HYDE. Yes, sir.

Mr. BERMAN. If that is correct, then if super computers are on the National Security Control List, which I am sure they are, or a variety of other items and technologies that are on the National Security Control List, and they are going to a trustworthy end user in Great Britain, and to be used in a nuclear or a missile program being developed by Great Britain, a signer of the Nuclear Non-Proliferation Treaty, there would be a presumption of denial for that item. That seems like we are going too far.

So if my reading is correct, I would not support this amendment.

Mr. BEREUTER. Does the gentleman from California have the time?

Mr. BERMAN. Yes.

Mr. BEREUTER. Would you yield?

Mr. BERMAN. Sure.

Mr. BEREUTER. Are you saying that as you read it, all four points have to apply?

Mr. BERMAN. No. Any one of the four have to apply.

Mr. BEREUTER. Thank you.

Chairman HYDE. The gentleman from California, would you accept an amendment with an exception for countries or end users that were subject to a multilateral export control regime? Analogous to what we just did in amendment number 5.

Do you understand—

Mr. BERMAN. I do, but I am concerned because it depends on the items we are talking about and which multilateral control regime we are talking about. I do not think I'd want to send the precursor of some chemical weapon to a country that was not a member of—

Chairman HYDE. In other words, if the gentleman would yield, we will pull this amendment and we will work on it some more with the gentleman. I think we are on the same track. I view the objection you have made as a significant omission in the integrity of what we are doing, so we will pull that.

I withdraw the amendment.

Are there further amendments?

Mr. BERMAN. I have an amendment at the desk.

Chairman HYDE. Mr. Berman has an amendment at the desk. The clerk will report.

Ms. BLOOMER. Amendment offered by Mr. Berman.

Insert the following after title VI and redesignate the succeeding—

[The amendment referred to follows:]

AMENDMENT TO H.R. 2581**OFFERED BY MR. BERMAN**

Insert the following after title VI and redesignate the succeeding title and sections, and references thereto, accordingly:

1 **TITLE VII—EXPORTS OF**
2 **SATELLITES**

3 **SEC. 701. APPLICABILITY.**

4 This title applies with respect to exports, and all ap-
5 plications for licenses to export, satellites and related
6 items, notwithstanding any other provision of this or any
7 other Act.

8 **SEC. 702. EXPORT CONTROLS ON SATELLITES AND RE-**
9 **LATED ITEMS.**

10 All satellites and related items that were on the Com-
11 merce Control List of dual-use items in the Export Admin-
12 istration Regulations (15 C.F.R. part 730 et seq.) on Oc-
13 tober 16, 1998, shall, subject to sections 703 and 704,
14 be controlled under this Act.

15 **SEC. 703. EXPORT LICENSE PROCEDURES.**

16 (a) REFERRAL TO OTHER DEPARTMENTS AND
17 AGENCIES.—The Secretary shall refer to the Secretary of
18 Defense, the Secretary of State, and the heads of other
19 departments and agencies that the Secretary considers ap-

1 appropriate, all applications for licenses to export satellites
2 and related items.

3 (b) REQUIRED CONSULTATIONS WITH INTEL-
4 LIGENCE COMMUNITY.—The Secretary, the Secretary of
5 Defense, and the Secretary of State, as appropriate, shall
6 consult with the Director of Central Intelligence during
7 the review of any application for a license involving the
8 overseas launch of a commercial satellite of United States
9 origin.

10 (c) TIME PERIOD FOR REFERRALS.—Within 30 days
11 after the Secretary refers an export license application
12 under this section, each department or agency to which
13 an export license application has been referred shall pro-
14 vide the Secretary with a recommendation to either ap-
15 prove or deny the license application. A department or
16 agency that fails to provide a recommendation within that
17 30-day period shall be deemed to have no objection to the
18 decision of the Secretary on the license application.

19 (d) INTERAGENCY DISPUTE RESOLUTION PROC-
20 ESS.—If there is no agreement among the Secretary, the
21 Secretary of Defense, and the Secretary of State to issue
22 or deny a license to which this section applies, then the
23 Secretary shall refer the license application to an inter-
24 agency dispute resolution process established by the Presi-
25 dent. The dispute resolution process shall be completed

1 within a period of 60 days. A license pursuant to the appli-
2 cation shall not be issued or denied until the Secretary,
3 the Secretary of Defense, and the Secretary of State agree
4 to issue or deny the license, or until the President makes
5 a determination to issue or deny the license.

6 **SEC. 704. MANDATORY STATE DEPARTMENT REVIEW.**

7 (a) CERTAIN DEFENSE SERVICES.—The provision of
8 defense services by United States persons, including serv-
9 ices or assistance provided during technical interchange
10 meetings, in connection with the launch of a satellite from,
11 or by nationals of, the People’s Republic of China, are sub-
12 ject to section 38 of the Arms Export Control Act.

13 (b) NOTIFICATION TO CONGRESS.—At least 30 days
14 before any export license or any technical assistance agree-
15 ment is approved under subsection (a), the President shall
16 transmit a certification with respect to such export license
17 or technical assistance agreement pursuant to section
18 36(c) of the Arms Export Control Act, without regard to
19 the value limitation thereunder.

20 **SEC. 705. DEFINITIONS.**

21 In this title:

22 (1) DEFENSE SERVICE.—The term “defense
23 service” shall have the meaning set forth in section
24 47 of the Arms Export Control Act or regulations
25 issued thereunder.

1 (2) RELATED ITEMS.—The term “related
2 items” means the satellite fuel, ground support
3 equipment, test equipment, payload adapter or inter-
4 face hardware, replacement parts, and nonembedded
5 solid propellant orbit transfer engines described in
6 the report submitted to Congress by the Department
7 of State on February 6, 1998, pursuant to section
8 38(f) of the Arms Export Control Act (22 U.S.C.
9 2778(f)), as well as systems, components, parts, ac-
10 cessories, and associated equipment for satellites, in-
11 cluding ground control equipment.

12 (3) SATELLITE.—The term “satellite” means
13 any commercial communications satellite.

14 **SEC. 706. CONFORMING AMENDMENTS.**

15 (a) 1999 NDAA.—(1) Section 1513(a) of the Strom
16 Thurmond National Defense Authorization Act for Fiscal
17 Year 1999 (22 U.S.C. 2778 note) is repealed.

18 (2) Section 1513(c) of that Act is amended by strik-
19 ing “(1) Subsection (a)” and all that follows through
20 “(2)”.

21 (3) Section 1514(a)(6) of that Act is amended by
22 striking “Secretary of State” and inserting “Secretary of
23 Commerce and the Secretary of State”.

24 (b) 2000 NDAA.—(1) Section 1404 of the National
25 Defense Authorization Act for Fiscal Year 2000 (22

1 U.S.C. 2778 note) is amended in the matter preceding
2 paragraph (1), by striking “Secretary of State” and in-
3 serting “Secretary of Commerce or the Secretary of State,
4 as the case may be,”.

5 (2) Section 1410 of that Act, and the item relating
6 to that section in the table of contents of that Act, are
7 repealed.

8 (3) Section 1411(a) of that Act is amended in the
9 first sentence by striking “involving the overseas launch
10 of a commercial satellite of United States origin” and in-
11 serting “to provide defense services referred to in section
12 704 of the Export Administration Act of 2001, in connec-
13 tion with the launch of a satellite”.

14 (4) Section 1412(d) of that Act is amended by strik-
15 ing “Secretary of State and” and inserting “Secretary of
16 Commerce, the Secretary of State, and”.

17 (c) ADDITIONAL CONFORMING AMENDMENTS.—(1)
18 Section 1309 of the Admiral James W. Nance and Meg
19 Donovan Foreign Relations Authorization Act, Fiscal
20 Years 2000 and 2001 (as enacted by Public Law 106–
21 113; 113 Stat. 1501A–460) is amended—

22 (A) by amending the section heading to read as
23 follows:

24 **“SEC. 1309. OFFICE OF DEFENSE TRADE CONTROLS.”;**

25 (B) by striking subsections (a) and (c); and

1 (C) in subsection (b), by striking “(b) FINAN-
2 CIAL AND PERSONNEL RESOURCES.—”.

3 (2) The table of contents of that Act is amended by
4 striking the item relating to section 1309 and inserting
5 the following:

“Sec. 1309. Office of Defense Trade Controls.”.

6 **SEC. 707. EFFECTIVE DATE.**

7 (a) IN GENERAL.—This title and the amendments
8 made by this Act shall take effect on the date of the enact-
9 ment of this Act, and shall apply to any export license
10 application made under the Arms Export Control Act be-
11 fore such date of enactment which is pending on such
12 date, and to any export license application made on or
13 after such date.

14 (b) TRANSFER OF PENDING APPLICATIONS.—Any
15 export license application made under the Arms Export
16 Control Act before the date of the enactment of this Act,
17 to which section 702 of this Act applies and which is pend-
18 ing on such date of enactment, shall be transferred to the
19 Department of Commerce upon the enactment of this Act.

20 **SEC. 708. EFFECT ON EXISTING LAW.**

21 Nothing in this title shall affect the continued appli-
22 cation of section 36 or 38 of the Arms Export Control
23 Act, or any other provision of that Act, to the export or

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1 other provision of defense services related to items in Cat-
2 egory 4 of the United States Munitions List.

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Chairman HYDE. Without objection, further reading of Mr. Berman's amendment is dispensed with and the gentleman is recognized for 5 minutes in support thereof.

Mr. BERMAN. Thank you, Mr. Chairman.

Basically this amendment restores jurisdiction to the Commerce Department over the licensing of one specific item, commercial—not military—commercial communications—not other satellites—and takes it back from the State Department.

Several years ago in all the concern, and much of it quite understandable and some of it appropriate, when we went over in the Cox Committee report, Congress, among other things, transferred jurisdiction over commercial communication satellites from the Commerce Department to the State Department.

At the time it seemed like the right thing to do, but in retrospect I think we over-reacted. I am offering this amendment with Mr. Rohrbacher, whose name for some reason is not on this amendment. But this is a collaborative effort of the two of us. And I just want to point that out.

But in any event, to go back to my point, in retrospect, I think we over-reacted. We took this step before fully considering all of the consequences. The result has not been what we expected or desired.

Since the transferring of jurisdiction it has become clear the State Department, while well intentioned, simply is not the right agency to license commercial satellites.

State's Office of Defense Trade Controls, which is the old Office of Munitions, is in the business of licensing munitions, tanks, fighter airplanes, fire arms. They do a good job of protecting our national security but they are not set up to license dual-use items like communication satellites that are used for commercial purposes.

A GAO report on export licensing processing times makes the point. State takes an average of 91 days to reach a final decision. Commercial satellites are included in this. For commercial satellites it is usually much, much longer, and this does not include the additional time for congressional notification.

We are the only country in the world that treats commercial communication satellites as munitions. This puts U.S. satellite manufacturers at a competitive disadvantage and has contributed to the decline in U.S. satellite exports.

Our market share has plummeted, since we made this change, from 75 percent to 45 percent this past year.

I am not saying export controls and the transfer are the only reasons. We have had the Asian fiscal crisis, we have had exchange rate problems. There has been a consolidation in the European satellite industry. But everyone there, and objective people from outside, all agree it has had a significant impact in that massive reduction in market share.

Hong Kong based satellite operator Asia Sat recently decided to purchase a European made satellite simply because of U.S. export controls.

In addition, at least one European satellite maker has instructed their engineers to reduce the use of U.S. components and their design to avoid potential export-related problems.

The purpose of our amendment is to turn the situation around, level the playing field with our international competitors, while maintaining strong national security protection. It returns jurisdiction over commercial communication satellites and their components to Congress. We establish a reasonable timeframe for the consideration of export license applications.

To ensure that our national security is protected, we mandate that Commerce refer all license applications for satellites and related components to Departments of State and Defense. For overseas launches, the head of the CIA must be consulted. The review must be completed within 30 days. If they disagree (Commerce, State and Justice) about whether to give a license, it kicks it upstairs via interagency dispute resolution.

In effect what we are saying is the primary jurisdiction goes to Commerce, tight time limits, and if State or Defense disagrees with a decision to grant a license they can veto it unless the President overturns that disagreement.

So we think we have extraordinary protections in here. We include all the requirements for around-the-clock Defense Department monitoring, technology, and encryption technology control plans.

In other words, when that satellite is placed on the launchers in the designated countries, there is monitoring. We require State Department licenses. This was a big part of the problem that the Cox Committee reported. We require State Department licenses for launch failure investigations to make sure that unauthorized technology transfers and intelligence can re-review, have an opportunity verify the legitimacy of end users. And for launches in China, the amendment requires an additional State Department license to cover the exchange of any technical data. Before being issued, any such license must be notified to Congress.

This is in addition to the existing Tiananmen Square sanctions enacted by Congress back in 1990 which require a presidential waiver for any launch of an American satellite in China.

One final point and then I will close.

When we transferred jurisdiction to State it was in the name of U.S. security. As we watch our market share in commercial satellites plummet, I would argue we are undermining our national security. Our military relies on satellites to maintain battlefield superiority. Without a healthy competitive, innovative domestic satellite industry, our ability to field the world's most advanced military-related satellites will suffer.

During the debate on export controls for encryption technology we often heard the argument that if the bad guys are going to use encryption, we are better off if they are using technology made by the United States. We do not need to go into that any further.

But these are several important reasons why it is a disastrous national security consequence for us to lose our commercial satellite capability for military reasons as well as for the commercial industrial base economic arguments.

I yield back the lack of time I have.

Chairman HYDE. The gentleman from California, Mr. Rohrabacher?

Mr. ROHRABACHER. If there are others who are going to be speaking on this issue I would prefer to reserve my time and speak a little bit later.

Chairman HYDE. Very well. Then the gentleman from California, Mr. Lantos.

Mr. LANTOS. Mr. Chairman I will be brief.

I think it is a carefully crafted amendment and I want to commend Mr. Berman on that, and I fully support it.

Chairman HYDE. Mr. Bereuter?

Mr. BEREUTER. Mr. Chairman, I had hoped to have a substitute amendment ready, but we simply could not get it together in time.

We changed the law to move the primary responsibility to the State Department for a reason. The reason was that the Commerce Department had a conflict of interest, and that they were sloppy and not giving proper consideration to the national security of this country. That is what the result of the Cox Committee effort concluded.

I was a member of that committee. You may remember our recommendations came out of that nine person committee unanimously. And here we are proposing to send it right back to Commerce where they will have a conflict of interest.

I think there are some features in the two gentlemen's amendments that are worthy, but I do not agree—I forcefully, adamantly disagree—with moving it back to the Commerce Department.

Now if there are problems in State, those problems need to be corrected. But I would say this. I think it is an overstatement to suggest that there has been a significant impact on market share because of its move to State. The reason there was a significant impact is entirely unrelated to that move to State.

So while I can read the handwriting on the wall, I tell you this is a very poor amendment and it is the wrong step for us to take. Poor amendment in one respect, and that is the move to the Commerce Department.

Mr. BERMAN. Will the gentleman yield?

Mr. BEREUTER. I would be pleased to yield to the gentleman.

Mr. BERMAN. I am unclear what conflict of interest does the Commerce Department have in licensing this dual-use item that they do not have in licensing any other dual-use item?

Mr. BEREUTER. They have a conflict in dual-use items.

Mr. BERMAN. Oh, well. We have a lot of industries. Let us take out all of it. Why just the commercial satellite industry? I do not understand. What is their conflict? Because we want to promote exports?

We are giving Defense and State a veto in this bill. They can stop any license that may be issued. Well, I am arguing now. I am not questioning. I am sorry.

Chairman HYDE. Will the gentleman yield?

Mr. BEREUTER. I yield back the balance of my time.

Chairman HYDE. I yield myself 5 minutes.

I like to remind Members of the key conclusion reached by the bipartisan Cox/Dicks Committee regarding missile and space technology exports to China. That conclusion was that the PRC illegally obtained U.S. missile and space technology that has improved the PRC's military and intelligence capability.

More specifically, the Cox Committee found that U.S. satellite manufacturers deliberately acted without the legally required license and violated U.S. export control laws by giving information, advice, and assistance that improved the reliability of Chinese rockets used to launch satellites, which is also useful for the design and improved reliability of future PRC ballistic missiles.

As my colleagues will recall, these concerns were not limited solely about technology transfers to China. This Committee and the Congress, for that matter, have been quite concerned about such transfers to Russia. In fact with the strong support of Congressman Berman we successfully enacted the Iran Non-Proliferation Act.

Because of these concerns, as my colleagues will recall, the Congress adopted significant revisions in U.S. law regarding the export of commercial communication satellites, including transferring licensing jurisdiction to the State Department as well as putting into place mandatory monitoring and verification procedures.

The purpose of this amendment is to reverse the course once again by transferring licensing jurisdiction back to the Commerce Department for said satellites. I think this is wrong for several reasons.

In my view, licensing review for exports of militarily sensitive technology to countries of proliferation concern such as China and Russia should be guided by those agencies which pursuant to U.S. law and practice give an overriding priority to national security considerations. In particular, I believe it is essential that the State Department continue to issue licenses governing defense services provided by U.S. nationals as they interact with foreign nationals with respect to the integration of the satellite with the launch vehicle, which is sometimes called the form, fit and function discussions. These discussions regarding integration are at the heart of what we are trying to control, including the technical interchange meetings related to the mating of the satellite to the launch vehicle.

It is critical that the State Department continue to regulate these defense services, not the Commerce Department, as this amendment intends. First, because simply put, Commerce does not and cannot regulate such services. The Commerce Department does not have the authority to regulate defense services or technical assistance agreements which govern such activities. That is the responsibility of the Secretary of State pursuant to the authorities of the Arms Export Control Act.

Now this amendment does require a license for defense services, but only for exports of satellites for launch in or by nationals of the PRC. I believe this amendment should cover the interaction between U.S. and foreign nationals regarding the integration of U.S. satellites or foreign satellites incorporating U.S. technology for exports involving Russia and Ukraine as well.

I believe this is particularly critical with regard to Russia, because it is important to retain leverage on the issue of missile proliferation from Russia to Iran and elsewhere. Our launch "agreement" with the Russians has now lapsed. Our government needs appropriate levers to get the attention of the Russians.

Additionally, I do not believe it is wise to place the responsibility of enforcing violations by U.S. satellite manufacturers with the

Commerce Department, an agency which to the best of my knowledge has never taken any action against U.S. satellite firms which have assisted the PRC and other countries in violations of U.S. export laws.

Contrast this with the State Department, which has successfully settled several cases which not only have brought millions of dollars into the U.S. Treasury, but more importantly helped hopefully to provide a deterrent to such U.S. firms from violating our export laws.

Finally, I believe this amendment is misguided in its timing. I believe we send exactly the wrong message to the Administration in approving this amendment today at the precise time that the Justice Department is considering its decision on whether to undertake criminal proceedings against certain U.S. satellite manufacturers for violations of U.S. export control laws.

For these reasons I urge Members of the Committee to reject this amendment.

Is there further discussion? Mr. Delahunt?

Mr. DELAHUNT. I move to strike the last line.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I listened attentively to the Chairman's remarks, and I just want to address several questions to the proponent of the amendment, Mr. Berman, and pose to him first, why was not the Ukraine and Russia included in the amendment? And secondly, Mr. Berman made reference to both the Department of State and the Department of Defense having veto power in the issuance of any permit.

From those remarks I would presume that the same monitoring scrutiny that is invested by those agencies now, by those departments, would also be invested if the permit, the issuance of the permit were transferred to the Department of Commerce.

I would yield to the gentleman for a response.

Mr. BERMAN. I thank the gentleman for yielding.

On the first question, Russia and Ukraine. There are only four countries in addition to the United States that have commercial launch capabilities. While in emotional moments I might like to require the kind of special licensing that Chairman Hyde suggests for France, they are our NATO ally and that would probably not be appropriate.

China, as the Chairman concedes, we require all of this.

Russia and Ukraine, with regard to them, the only launch services they provide are in the context of joint ventures with American companies. Boeing is partnered with the Ukraine in sea launch while Lockheed/Martin has a business arrangement with Russia. Those joint ventures already require a license for the launch services they provide.

In other words, the interactions among Americans and Russians on the one hand and Ukrainians and Americans on the other, for a whole range of technical matters, are approved on an annual basis by the State Department right now. That is not impacted by this amendment.

Requiring another license which adds nothing for these joint ventures is overkill, it's part of the problem that gives a tremendous competitive advantage to Arian, the French launch provider. Over

our joint venture launch capabilities in Russia and in Ukraine, the proliferation argument is exactly the opposite. I know where the Chairman is coming from and he knows where I'm coming from on nuclear and missile proliferation to Iran. We want to do anything we can to stop it.

We have Russian entities here involved with us who are the cleanest of the clean, and I invite you to check all the sources that we cannot describe here in this particular area. These are guys who have thrown out the proliferators and disassociated themselves from the subsidiaries. The Proton joint venture has been cleaned. To punish it and the Russians who work at it by in a sense creating new mechanisms which will keep commercial satellite owners from using their launches is just the wrong way to go. You want to reward the people who have done it right, and these folks have done it right.

Again, Defense and State have a veto under our amendment, and I find it very funny to argue that because the Justice Department is now considering whether to—I don't know the story of this but I heard the Chairman talk about it—to indict somebody for launches and conduct that took place when the licensing was still at State. That was before we changed it to Commerce and before Cox changed it back to State.

In other words, those launches by Hughes and Loreal took place while the State Department had jurisdiction. The State Department gave the licenses. The State Department gave the approvals; and the Chinese launches went boom, and bad things happened.

We then changed it to Commerce after that. If anything, I do not think it has to do with what the Justice Department is deciding to do about those launches, and the conduct that is in question took place while the licensing was still at State, before it changed to Commerce, before we then took it back to State. Let us get it back to Commerce where it should be with State and Defense having a very direct role, a right to veto.

Thank you for your question, Mr. Delahunt.

Chairman HYDE. Mr. Rohrabacher?

Mr. ROHRABACHER. Thank you very much.

I am a supporter of Mr. Berman's amendment. In fact the amendment has been called the Rohrabacher/Berman or Berman/Rohrabacher amendment, depending on which side of the aisle you are talking to people.

Let me just start off by saying that I am very pleased that people remember the Cox Report because the Cox Report was based on information that I provided to the Republican leadership after a 6-month investigation on my own. It took me many months to get the Republican leadership to pay attention to the basic facts that were later proven by the Cox Report. So I do not think I have to sit back and apologize to anybody about whether or not I am adamant enough about transfer of these types of technologies to communist China.

What my reading of that disaster, and it was a disaster because it has now made millions of Americans vulnerable, is that it was not the jurisdiction of the State Department or the jurisdiction of the Commerce Department. It was the jurisdiction of the Clinton Administration that was the problem. We have had an Administra-

tion dedicated to treating communist China as a strategic partner. We heard it here in hearing after hearing, and what happened as a result? There was a betrayal of America's interests by some of our biggest and most powerful corporate leaders, and a betrayal of our country's long-term national security interests. But it had nothing to do with whether it was the State Department or the Commerce Department.

What we have found now that we have transferred the licensing power to the State Department is that it has had one big effect. The big effect that it has had is that those satellite sales to friendly countries, those satellite sales to NATO allies, those high technology sales to countries that are friends of the United States have suffered as a result. Not just a little bit, but dramatically suffered because State Department's mindset is always let us not do this. Show me why we have to do this.

When you are talking about keeping America ahead of the pack and being able to out-compete its economic adversaries, in the years ahead that attitude will destroy us and that has something to do with the national security. If we destroy the commercial satellite industry in this country we will not be able to build our military satellites, so there is a big relationship here to the viability of that satellite industry.

Sure, we should have national security concerns, and as I just stated, I do not have to apologize to anybody about this issue. I am one who spent a lot of his personal time and effort researching and investigating it.

What we need to do is set up a system in which trade with countries that are friendly to the United States, or do not pose a threat to the United States, is relatively free while other trade with countries that pose a threat to the United States is relatively controlled, if not forbidden.

That is what Howard (Berman) and I have come up with. It took a lot of negotiation between our offices to come up with a formula.

The CIA will be providing information directly to the State Department and the Defense Department. They are in the loop on this. And the Defense Department and State Department have a veto power on whether or not these transactions will go through.

Now they can veto it. The only restriction there is that they have got to make up their mind within 90 days. Thirty? What is the total?

Mr. BERMAN. After it has been referred to them they have 30 days, and then if they veto, 60 days for the dispute resolution mechanism.

Mr. ROHRBACHER. Okay, so you have 90 days to make up your mind before that deal can go through. And I do not believe that that requirement is in some way going to open up the doors to bring this to a situation where national security has been compromised. In fact, what it does is draw attention to the fact that these agencies have to be effective and efficient in doing their job in order to make sure that our country's national security is protected. Otherwise what we are going to do is condemn a significant industry in the United States. We are talking about tens of thousands of high tech workers in California alone who are destined to

lose their jobs if we handcuff their industry in dealing with friendly countries.

Right now those industries in dealing with friendly countries find themselves waiting for 6 months, 8 months, 9 months, a year on a piece of equipment that would go to Belgium. Now give me a break. We should have a relatively free trade situation on high technology with Belgium. And if we continue to treat our high tech corporations this way we will lose our edge and America's national security will be in jeopardy because of that.

The most important thing right now is that we stay ahead of the Chinese and our potential adversaries.

By the way, it would not bother me one bit if the State Department or the Defense Department decided to veto all of the satellite trades with China. I do not care about that. I want any type of transactions with communist China to be looked at with a magnifying glass. But I do not want that same type of negativity to destroy our satellite industry with friendly countries.

One last note. I am the Chairman of the Space Aeronautics Subcommittee. I know these rocket issues. And just to let you know about Russia and about Ukraine, we actually learn more from the Russians from their space technology than they do from us, I can tell you that right now. We can be very grateful for the cooperation we have had in our dealings there.

They have done some things that are wrong and we are trying to put pressure on them so they do not spend their time and energy providing technology to countries like Iran. The best way to make sure they do not do that is to engage them, and engage their scientists in working with us, not put up roadblocks in front of them, so their scientists will be working with us rather than the Iranians.

That is what the purpose of this legislation is, facilitating trade with friendly countries, making it more difficult with other countries by making sure that the State Department and the Defense Department have a veto power.

With that I would ask for the support of my colleagues for the Howard/Berman/Rohrabacher amendment.

Mr. MENENDEZ. Mr. Chairman?

Chairman HYDE. Mr. Menendez.

Mr. MENENDEZ. Mr. Chairman, I see that the Deputy Assistant Secretary of State for Legislative Affairs is sitting in the audience, and I would like him to come forward, and I would ask whether or not the State Department is in fact supportive of this amendment.

Chairman HYDE. The gentleman is not recognized for that purpose. We made a statement earlier in the markup that there would be discussion among the Members, but not among the audience.

Mr. MENENDEZ. So is the Chair saying that it is not regular order during the markup to ask the State Department witness or any other Administration witness to say whether or not they are for or against an amendment?

Chairman HYDE. That is correct.

Mr. MENENDEZ. I want to thank the Chair for helping me create a record.

Chairman HYDE. Very good. I am terrorized by the fact that you are creating a record. [Laughter.]

The question occurs on the amendment. All those in favor say aye?

[Chorus of ayes]

Chairman HYDE. Opposed nay.

[Nays heard from the Committee]

Chairman HYDE. In the opinion of the Chair the ayes have it. The amendment is agreed to.

Are there further amendments?

The Chair has an amendment at the desk number 24.

Ms. BLOOMER. Amendment offered by Mr. Hyde.

Page 69, strike line 24 and all that follows through—

[The amendment referred to follows:]

AMENDMENT #4 TO H.R. 2581

OFFERED BY MR. Hyde / Mr. Lantos

Page 69, strike line 24 and all that follows through page 70, line 8, and insert the following:

- 1 (1) CLASSIFICATION REQUEST.—
- 2 (A) NOTIFICATION OF OTHER AGENCIES.—
- 3 In any case in which the Secretary receives a
- 4 written request asking for the proper classifica-
- 5 tion of an item on the Control List or the appli-
- 6 cability of licensing requirements under this
- 7 title, the Secretary shall promptly notify the
- 8 Secretary of Defense, the Secretary of State,
- 9 and the head of any other department or agen-
- 10 cy of the United States that the Secretary con-
- 11 siders appropriate, of the request.
- 12 (B) DETERMINATION; RESOLUTION OF
- 13 DISPUTES.—The Secretary shall make the de-
- 14 termination regarding proper classification
- 15 within 14 days after receiving the request and
- 16 inform the person making the request of such
- 17 determination. If an objection is raised by the
- 18 Secretary of State or the Secretary of Defense
- 19 regarding the Secretary's determination within
- 20 that time period, the disagreement shall be re-

1 solved through the interagency resolution proc-
2 ess described in section 402, except that any
3 such disagreement shall be resolved within 60
4 days.

Page 71, strike line 11 and all that follows through
page 72, line 13, and insert the following:

5 (3) FURTHER RESOLUTION.—The Presi-
6 dent shall establish additional levels for review
7 or appeal of any matter that cannot be resolved
8 pursuant to the process described in paragraph
9 (1). Each such review shall ensure that matters
10 are resolved or referred to the President not
11 later than 90 days after the completed license
12 application is referred by the Secretary.

Chairman HYDE. Without objection, further reading of the amendment is dispensed with and the Chair recognizes himself for 5 minutes in support of his amendment.

This amendment provides that in any case where the Secretary receives a written request for the classification of an item on the control list, he shall promptly notify the Secretary of Defense, the Secretary of State, and the head of any other appropriate agency of the request.

It also specifies that if an objection is raised by the Secretary of Defense or Secretary of State regarding the Secretary's determination of the request within the 14-day time period provided in the bill, then the disagreement shall be resolved through the interagency dispute process with all disagreements to be resolved within a 60 day period.

The amendment strikes a number of the existing dispute resolution provisions in the bill relating to the basis on which any votes may be taken in the interagency process and the type and rank of the officials who can participate in this process.

In place of this micromanaged approach, the amendment directs the President to establish additional levels for review and appeal if agreement on any matter, including a classification request, cannot be reached among the Secretaries of Commerce, State, Defense, and other relevant agencies. This amendment ensures that all key agencies, including State and Defense, play a role in the consideration of classification requests for items on the control list, a key activity in the export control process.

Classification decisions can be very technical and time consuming, frequently requiring experienced personnel from a number of agencies including the Departments of State and Defense whose views should be taken into account in the final determination.

Experience has shown that the Commerce Department has made some incorrect classification decisions in the past regarding satellites, night vision goggles and machine tools. The amendment provides for the orderly resolution of any interagency dispute that might arise in the consideration of these classification requests, many of which will continue to be handled in routine fashion within the prescribed 14 day period. But the amendment specifies that all other such disputes should be decided within a 60 day period.

The amendment also modifies the dispute resolution process outlined in the bill giving the President additional flexibility to determine how all interagency disputes should be resolved while maintaining the overall 90 day limit for the final resolution of such disputes.

Is there any further discussion?

Mr. Menendez?

Mr. MENENDEZ. Mr. Chairman, this amendment would vastly change and create an interagency nightmare. It would require that the Secretary of Commerce also notify the Secretary of State. It also would require any disagreements among the agencies to be resolved through the interagency dispute resolution process. Finally, it would significantly alter the bill's carefully drafted interagency dispute resolution process, dropping several paragraphs and leaving only a vague instruction to the President on levels of review.

I think the amendment not only misunderstands the commodity classification process, but threatens to derail the real intent of this bill.

Commodity classification is a critical but technical exercise that involves determining the capabilities and parameters of an item and assigning it a classification accordingly. This exercise is carried out by the technical experts at Commerce and Defense.

No one at State is involved, nor has State indicated that it wants to become involved.

Second, this technical exercise does not involve policy decisions. It literally involves figuring out whether, for example, a widget has two holes or three holes. Such decisions should not be referred to the interagency process, which is properly focused on policy questions.

Finally, classification requests now are handled under administrative guidelines issued by the NSC to improve interagency cooperation and transparency. The Administration has indicated that it intends to use an executive order outlining in detail how commodity classifications will be handled.

Toward that end, the Administration specifically asks Congress to refrain from legislating in this area. Thus this section neither codifies current procedure nor restricts the Administration's ability to change them. Any attempt to do so is to try to disrail the ultimate intention of the bill.

I think it also requires—which is not within the budget, if you are going to do this—it requires all types of expertise that State does not have in this context. Therefore I hope that it is going to be accompanied by the appropriate resources for State to be able to engage in this meaningful way.

So it is, again, another effort to further put this in an intricate web in which paralysis by analysis will take place involving a series of agencies, ultimately in which nothing will ever get exported and we will be left dismally behind at the end of the day.

Chairman HYDE. Will the gentleman yield?

Mr. MENENDEZ. My time has expired. The Chair has the power to grant me extra time. I would be happy to yield.

Chairman HYDE. Well yes, I would anticipate that you would yield to me out of extra time.

Mr. MENENDEZ. Surely.

Chairman HYDE. But if we want to formalize it, does the gentleman request extra time?

Mr. MENENDEZ. I am just trying to follow regular order, Mr. Chairman.

Chairman HYDE. Very well.

Then I will not ask the gentleman to yield any time. I will yield to Mr. Flake, who I am sure will have a contribution to our discussion.

Mr. Flake?

Mr. FLAKE. A very brief one. I would just make some of the same points.

This is authority given to the State Department that they have not requested, and the Defense Department as well.

It would add 90 days to a process that currently takes an average 2 weeks. So again, this is another example of where we are

simply stringing the process out, and I would submit unnecessarily since the State Department and the Administration certainly have not requested it.

I will yield back the balance of my time.

Mr. LANTOS. Mr. Chairman?

Chairman HYDE. The gentleman from California.

Mr. LANTOS. Mr. Chairman, I want to express my strong support for the amendment, and I yield the balance of my time to the Chair.

Chairman HYDE. I thank the gentleman.

This amendment is rather a simple one. It requires expanded notification of a request for a classification, an item on the control list, and it requires notification to the Secretary of Defense and the Secretary of State by the Secretary of Commerce and the head of any other department that the Secretary of Commerce considers appropriate. I do not see that that is a horrendous burden. I see that it is broadening the range of people who have information, might have information and expertise.

Moreover, there is a time limit of 14 days within which the Secretary must make the determination regarding proper classification. If an objection is raised by State or Defense, the disagreement goes to the interagency resolution process and shall be resolved within 60 days.

So this is setting time limits, it expedites the transactions that they are dealing with, but it just requires a few more people to sit at the table if they can make a contribution.

The expertise that Commerce might not have, State might have. The expertise that State does not have, Defense might have. Broadening the range of people who should be notified, simply notified of the request for a classification change seems to me to be de minimus and useful and helpful.

Is there any further discussion?

A question occurs on the amendment offered by myself.

All those in favor say aye.

[Chorus of ayes]

Opposed nay?

[Chorus of nays]

It is the opinion of the Chair, the ayes have it. The ayes do have it. The amendment is agreed to.

Now we have Mr. Houghton, who is recognized.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Mr. Chairman, we have gone through a few of these amendments and it is clear the way this thing is going. I regret it, because I think it is not in the best interest of the country, but that is my own personal feeling.

However at the same time, recognizing the importance of saving time, that I would like to submit that we have an en bloc amendment which would gather up all the other individual amendments and then we can have an up or down vote on it.

I think we are going down the same road and touching the same sign posts and touching the same trees, and basically it is an issue of philosophy. You want to get in and micromanage and decide all the details which I happen to think, as a former businessman, is

going to do tremendous damage to the commercial interests of this country, or do you want to do it another way?

So in the hopes of trying to speed up the process, there is a description of an en bloc amendment on your desk, two pages. I will not go through all the details of it. Maybe somebody would like to do that for me. But I would submit that.

Chairman HYDE. Would the gentleman yield?

Mr. HOUGHTON. Yes.

Chairman HYDE. I think the gentleman has an interesting and a very practical idea. We have a description of these amendments, there are 35 of them. We have a one or two sentence, sometimes three sentence description of them. And if the Members will take a few moments and go through them to see if they have any serious objection, we can, by unanimous consent, adopt these amendments, leaving the more controversial ones for further debate, and individual attention.

Mr. LANTOS. Mr. Chairman?

Chairman HYDE. Does the gentleman intend to add number seven to the revised list?

Mr. HOUGHTON. Yes.

Chairman HYDE. Very well.

Mr. Lantos?

Mr. LANTOS. Mr. Chairman, Mr. Houghton has an excellent suggestion. I strongly support it.

Chairman HYDE. I am glad to hear that. That is helpful.

Everybody take a good look at the description of the en bloc.

[Pause]

Chairman HYDE. If we do agree on this, I am informed by staff we have no further amendments other than Mr. Menendez, I believe, who has a substitute, or a few substitutes. But we are almost done if we can—

Mr. MENENDEZ. Mr. Chairman? Parliamentary inquiry?

Chairman HYDE. Yes, sir.

Mr. MENENDEZ. I assume that at some point there will be a request for unanimous consent to proceed this way.

Chairman HYDE. If there is agreement, yes.

Mr. MENENDEZ. I want to facilitate the Committee's work but would ask the Chair whether, since you are including so many amendments, some of them of which are very significant in the en bloc, whether you will liberalize somewhat your 5 minute rule.

Chairman HYDE. Liberalize it—you mean taking time to speak on an issue?

Mr. MENENDEZ. Yes.

Chairman HYDE. Surely. If anybody needs additional time I am perfectly willing to grant it.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Chairman HYDE. I think this is a good suggestion. If there are not any real problems with this—Mr. Flake?

Mr. FLAKE. Mr. Chairman, Mr. Houghton is my hero. This is great. I have to go along with this.

Chairman HYDE. Thank you. That was a very timely interjection. [Laughter.]

There seemed to be a lull in the momentum that we are trying to build up here.

Mr. BEREUTER. Mr. Chairman?

Chairman HYDE. Yes.

Mr. BEREUTER. May we have about two more minutes?

Chairman HYDE. You surely may.

[Pause]

Chairman HYDE. Would you let me know when you are ready

Mr. Bereuter?

[Pause]

Mr. BEREUTER. Very well.

Chairman HYDE. Thank you.

Is there any objection to considering these en bloc?

[No response]

Chairman HYDE. All right. I now ask for unanimous consent that the 35 items plus number seven as revised be considered en bloc, and voted on, adopted en bloc.

[The amendments referred to follow:]

S.145

H.L.C.

1

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 3, line 2, strike "In" and insert "Except as otherwise expressly provided, in".

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 4, line 21, strike "or".

Page 4, insert the following after line 21 and redesignate the succeeding clause accordingly:

- 1 (iii) the release of technology to a for-
2 eign national within the United States; or

Page 146, insert the following after line 7:

- 3 (3) REGULATIONS ON EXPORTS TO FOREIGN
4 NATIONALS.—The Secretary, with the concurrence
5 of the Secretary of State and the Secretary of De-
6 fense, shall issue regulations to govern the release of
7 technology to a foreign national within the United
8 States and to establish appropriate procedures and
9 entities to ensure compliance with those regulations.

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 12, line 1, insert "non-proliferation and national security experts," after "labor organizations,".

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 16, lines 5 and 6, insert "and the Secretary of State" after "in consultation with the Secretary of Defense".

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8/1/01 new#7 vvt
in bloc H.L.C.

AMENDMENT TO H.R. 2581

OFFERED BY MR. HYDE

Page 18, insert the following after line 14:

1 (e) PRESUMPTION OF DENIAL ON CERTAIN LI-
2 CENSES.—

3 (1) PRESUMPTION.—Notwithstanding any other
4 provision of law, when a license is required for ex-
5 port to any country of any item on the National Se-
6 curity Control List for any reason specified in sub-
7 section (b), there shall be a presumption of denial
8 for the export of such item if there is a significant
9 risk that—

10 (A) such item would contribute to the nu-
11 clear, chemical, or biological weapons capabili-
12 ties of such country or the capabilities of such
13 country to deliver such weapons;

14 (B) such item would otherwise contribute
15 to the military capabilities of such country so as
16 to undermine regional stability or otherwise
17 prove detrimental to the national security of the
18 United States, a NATO ally, or major non-
19 NATO ally;

1 (C) such item would likely be used or di-
2 verted to a use or destination not authorized by
3 the license or United States policy; or

4 (D) the export of such item would other-
5 wise materially and adversely affect the national
6 security interests of the United States.

7 (2) EXCEPTION.—Paragraph (1) shall not
8 apply to the export of an item to a country that is
9 an adherent to a multilateral export control regime
10 controlling the export of such item.

11 (3) DEFINITION.—For purposes of this sub-
12 section, an “adherent to a multilateral export control
13 regime” is—

14 (A) a country that is a member of a multi-
15 lateral export control regime;

16 (B) a country that, pursuant to an inter-
17 national understanding to which the United
18 States is a party, controls exports in accordance
19 with relevant criteria and standards of a multi-
20 lateral export control regime; or

21 (C) a major non-NATO ally that, pursuant
22 to its national legislation, controls exports in
23 accordance with such criteria and standards.

H.145

H.L.C.

8

5

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 19, lines 1 and 15, insert "and the Secretary of State" after "Defense".

S.45A

H.L.C.

9

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 23, line 17, strike "capabilities" and insert "goals, capabilities, and intentions".

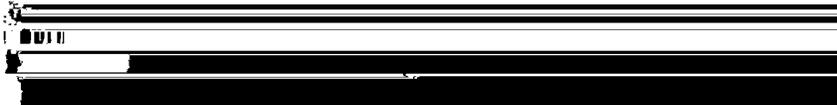
Page 23, line 19, insert "or adherence to" after "in".

Page 23, line 22, insert "or adherence to" after "in".

Page 24, insert the following after line 21:

1 (11) The extent to which the country, pursuant

2 to its laws, regulations, and practices, is



S.145

H.L.C.

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7

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 27, lines 16 and 22, strike "party" and insert "person".

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H.L.C.

12

8

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 31, strike lines 10 and 11 and insert the following:

1 (B) DIRECTLY COMPETITIVE ITEM.—The
2 determination

Page 31, strike lines 20 through 25 and insert the following:

3 (C) EXCEPTION.—An item is not directly
4 competitive with or substantially identical to a
5 controlled item if the item is not of comparable
6 quality to the controlled item with respect to
7 characteristics that resulted in the export of the
8 item being controlled.

AMENDMENT TO H.R. 2581
OFFERED BY Mr. Hyde / Mr. Lantos

Page 42, insert the following after line 7:

1 “(4) To control the export of goods and sub-
2 stances which are banned, severely restricted, highly
3 regulated, or never regulated for use in the United
4 States in order to foster public health and safety
5 and to prevent injury to the foreign policy of the
6 United States as well as to the credibility of the
7 United States as a responsible trading partner.”.

Page 58, insert the following after line 3:

8 **SEC. 312. PROMOTION OF SAFE ENVIRONMENTS.**

9 (a) **IN GENERAL.**—In order to carry out the policy
10 set forth in paragraph (4) of section 301(b), the President
11 may prohibit the exportation of pesticides or chemicals
12 that the President deems to be a risk to the public health,
13 safety, or environment of the United States or any other
14 country.

15 (b) **REPORT ON EXPORTS.**—

16 (1) **REPORT.**—The President shall, by not later
17 than 6 months after the date of enactment of this
18 Act—

1 (A) identify all United States persons who
2 export any hazardous pesticide or chemical that
3 is—

4 (i) included in the Convention on the
5 Prior Informed Consent Procedure for Cer-
6 tain Hazardous Chemicals and Pesticides
7 in International Trade, or the Convention
8 on Persistent Organic Pollutants; or

9 (ii) either banned, severely restricted,
10 highly regulated, or never regulated for use
11 in the United States;

12 (B) determine the quantities of each haz-
13 ardous pesticide and chemical described in sub-
14 paragraph (A) that each United States person
15 has exported in the 2-year period preceding the
16 date of enactment of this Act; and

17 (C) submit to the Committee on Inter-
18 national Relations of the House of Representa-
19 tives and to the Committee on Banking, Hous-
20 ing, and Urban Affairs and the Committee on
21 Foreign Relations of the Senate a compre-
22 hensive report on the information described in sub-
23 paragraphs (A) and (B).

24 (2) REGULATORY AND ADMINISTRATIVE
25 FRAMEWORKS.—The President shall include in the

1 report under paragraph (1) a detailed description,
2 done in consultation with appropriate departments
3 and agencies, of the regulatory and administrative
4 frameworks in the United States for measuring,
5 monitoring, and controlling the export of the pes-
6 ticides and chemicals described in paragraph (1),
7 and any recommendations the President has on how
8 such frameworks could be improved as methods for
9 controlling the export of those substances.

10 (c) GAO REPORT.—The Comptroller General of the
11 United States, in consultation with the National Academy
12 of Sciences and such other departments and agencies as
13 the Comptroller General considers appropriate, shall, by
14 not later than 1 year after the date of the enactment of
15 this Act—

16 (1) examine the regulatory and administrative
17 frameworks in the United States for measuring,
18 monitoring, and controlling the exportation of the
19 pesticides and chemicals described in subsection (b),
20 and determine the efficiency and effectiveness of
21 those frameworks;

22 (2) compare the United States regulatory and
23 administrative frameworks under paragraph (1) with
24 those of the other member countries of the Organi-
25 zation for Economic Cooperation and Development,

1 and provide recommendations concerning any ele-
2 ments of the frameworks of those countries that
3 might be applied to the United States frameworks to
4 help improve their efficiency and effectiveness;

5 (3) compare the quantities of each of the sub-
6 stances described in paragraph (1) which have been
7 exported by the United States and all other member
8 countries of the Organization for Economic Coopera-
9 tion and Development during the 2-year period pre-
10 ceding the date of enactment of this Act;

11 (4) evaluate the adequacy of current statutory
12 and regulatory authority, as well as appropriations,
13 for measuring, monitoring, and controlling the ex-
14 port of those substances and suggest improvements
15 for ensuring better measuring, monitoring, and con-
16 trol of those exports; and

17 (5) submit to the Committee on International
18 Relations of the House of Representatives and to the
19 Committee on Banking, Housing, and Urban Affairs
20 and the Committee on Foreign Relations of the Sen-
21 ate a report on the findings under paragraphs (1)
22 through (4).

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 42, strike line 22 and all that follows through page 43, line 8, and insert the following:

1 (A) in performance of a binding contract,
 2 agreement, or other contractual commitment
 3 entered into before the earlier of the date on
 4 which the President publishes in the Federal
 5 Register pursuant to section 302(a) a notice of
 6 intent to impose or implement an export control
 7 on that item or the date on which the President
 8 reports to Congress the President's intention to
 9 impose an export control on that item under
 10 this title; or

11 (B) under a license or other authorization
 12 issued under this Act before the earlier of the
 13 date on which the export control is imposed, the
 14 date on which the President publishes in the
 15 Federal Register pursuant to section 302(a) a

16 notice of intent to impose or implement an ex-
 17 port control on that item, or the date on which
 18 the President reports to Congress the Presi-

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H.L.C.

18

14

AMENDMENT TO H.R. 2581**OFFERED BY** Mr. Hyde / Mr. Lantos

Page 48, lines 3 and 4, strike "a conclusion that the probable achievement of" and insert "whether".

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H.L.C.

19

15

AMENDMENT TO H.R. 2581**OFFERED BY** Mr. Hyde / Mr. Lantos

Page 52, line 24, strike "on the date" and all that follows through "Register" on line 25 and insert the following: "30 days after the President has consulted with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate on the foreign policy implications of such termination. Notice of the termination shall be published in the Federal Register".

AMENDMENT TO H.R. 2581
OFFERED BY Mr. Hyde / Mr. Lantos

Page 61, line 2, insert "and" after "title;".

Page 61, strike lines 3 through 16 and insert the following:

- 1 (ii) upon receipt of a completed
2 application—
3 (I) ensure that the classification
4 state on the application for the export
5 items is correct, and, if so, refer the
6 application, through the use of a com-
7 mon data base or other means, and all
8 information submitted by the appli-
9 cant, and all necessary recommenda-
10 tions and analyses by the Secretary,
11 to the Secretary of Defense, the Sec-
12 retary of State, and the heads of and
13 other departments and agencies the
14 Secretary considers appropriate; or
15 (II) return the application if a li-
16 cense is not required.

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 67, strike lines 15 through 17 and insert the following:

1 (1) AGREEMENT OF THE APPLICANT; COM-
2 PLEXITY OF ANALYSIS; NATIONAL SECURITY IM-
3 PACT.—

4 (A) AGREEMENT OF THE APPLICANT.—
5 Delays upon which the Secretary and the appli-
6 cant mutually agree.

7 (B) COMPLEXITY OF ANALYSIS.—A review-
8 ing department or agency requires more time
9 due to the complexity of the analysis, if the ad-
10 ditional time is not more than 60 days.

11 (C) NATIONAL SECURITY IMPACT.—A re-
12 viewing department or agency requires addi-
13 tional time because of the potential impact on
14 the national security or foreign policy interests
15 of the United States, if the additional time is
16 not more than 60 days.

Page 69, insert the following after line 21:

17 (8) INTELLIGENCE AGENCIES.—Delays nec-
18 essary to obtain information or assessments from in-
19 telligence agencies.

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 131, strike lines 11 through 13 and insert the following:

- 1 (f) POST-SHIPMENT VERIFICATIONS.—
- 2 (1) FOR CERTAIN EXPORTS AND COUNTRIES.—
- 3 The Secretary shall target post-shipment
- 4 verifications—
- 5 (A) to exports involving the greatest risk
- 6 to national security; and
- 7 (B) to those countries identified by the Di-
- 8 rector of Central Intelligence in the most recent
- 9 report that was submitted to Congress under
- 10 section 721 of the Intelligence Authorization
- 11 Act for Fiscal Year 1997 on the acquisition and
- 12 supply by foreign countries of dual-use items
- 13 and other technology useful for the development
- 14 or production of weapons of mass destruction.
- 15 (2) CONDUCT OF VERIFICATIONS.—The Sec-
- 16 retary may, with the concurrence of the Secretary of
- 17 State—
- 18 (A) utilize embassy personnel to conduct
- 19 post-shipment verifications; and

1 (B) establish guidelines and regulations al-
2 lowing United States persons to conduct those
3 verifications.

Page 132, strike lines 3 through 10 and insert the
following:

4 (3) REFUSAL BY COUNTRY.—(A) If a country
5 with which the United States has entered into an
6 agreement providing for post-shipment verifications
7 repeatedly obstructs or otherwise denies the post-
8 shipment verification of controlled items, the Sec-
9 retary shall deny a license for the export of those
10 items or any substantially identical or directly com-
11 petitive items or class of items to all end users in
12 that country until such post-shipment verification is
13 allowed.

14 (B) If the country in which an end user is lo-
15 cated refuses to allow post-shipment verification of a
16 controlled item, whether or not the United States
17 has an agreement with that country providing for
18 post-shipment verifications, the Secretary may deny
19 a license for the export of that item or any substan-
20 tially identical or directly competitive item or class
21 of items to all end-users in that country until such
22 post-shipment verification is allowed.

AMENDMENT TO H.R. 2581

OFFERED BY Mr. Hyde / Mr. Lantos

Page 138, strike lines 3 through 17 and insert the following:

- 1 (2) TERMINATION.—The authority granted by
- 2 this Act shall terminate on December 31, 2005.

AMENDMENT TO H.R. 2581
OFFERED BY Mr. Hyde / Mr. Lantos

Page 147, line 25, insert "by an officer of employee of the Department of Commerce" after "investigation".

Page 151, line 18, strike the period and all that follows through line 23 and insert the following:

1 , except that no civil penalty may be imposed on an
2 officer or employee of the United States, or any de-
3 partment or agency thereof, without the concurrence
4 of the department or agency employing such officer
5 or employee. Subsections 503(e), (g), (h), and (i)
6 and 507(a), (b), and (c) shall apply to actions to im-
7 pose civil penalties under this paragraph. At the re-
8 quest of the Secretary, a department or agency em-
9 ploying an officer or employee determined to have
10 violated paragraph (1) shall deny that officer or em-
11 ployee access to information exempt from disclosure
12 under this section. Any officer or employee who com-
13 mits a violation of paragraph (1) may also be re-
14 moved from office or employment by the employing
15 agency.

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 154, line 20, strike "and".

Page 154, insert the following after line 20 and redesignate the succeeding paragraph accordingly:

(15) An analysis and risk assessment of dual-use United States-origin items useful for the development or production of weapons of mass destruction acquired by countries identified by the Director of the Central Intelligence in the most recent report submitted to Congress under section 721 of the Intelligence Authorization Act for Fiscal Year 1997; and

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 155, insert the following after line 5 and redesignate succeeding sections accordingly:

1 **SEC. 702. RELATIONSHIP TO THE ARMS EXPORT CONTROL**

2 **ACT.**

3 Nothing in this Act shall be construed to alter or
4 affect—

5 (1) any provision of the Arms Export Control

6 Act; or

7 (2) any authority delegated by the President to
8 the Secretary of State under the Arms Export Con-
9 trol Act.

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Page 161, insert the following after line 18 and re-designate the succeeding sections accordingly:

1 **SEC. 704. RECOMMENDATIONS OF THE JUDICIAL REVIEW**

2 **COMMISSION ON FOREIGN ASSET CONTROL.**

3 In accordance with the findings of the Judicial Re-
4 view Commission on Foreign Asset Control contained in
5 the report of the Commission submitted to Congress in
6 January 2001 under section 810(g) of the Foreign Nar-
7 cotics Kingpin Designation Act (21 U.S.C. 1908(g)), the
8 President shall direct the Office of Foreign Assets Control
9 of the Department of the Treasury to—

10 (1) publish proposed regulations on sanctions in
11 order to provide public notice of, and invite public
12 comment on, the proposed regulations, unless exi-
13 gent circumstances are present;

14 (2) provide interpretations and guidelines to ac-
15 company the issuance of regulations; and

16 (3) take steps to expand and enhance the trans-
17 parency of its operations and decisionmaking stand-
18 ards by publishing its licensing and civil penalty de-
19 cisions in unclassified form and by providing an-
20 swers to “frequently asked questions” on its website.

AMENDMENT TO H.R. 2581**OFFERED BY Mr. Hyde / Mr. Lantos**

Insert the following after section 703 and redesignate the succeeding section accordingly:

1 **SEC. 704. IMPROVEMENTS TO THE AUTOMATED EXPORT**
 2 **SYSTEM.**

3 (a) **MANDATORY FILING.**—The Secretary, with the
 4 concurrence of the Secretary of State and the Secretary
 5 of the Treasury, shall publish regulations in the Federal
 6 Register to require, upon the effective date of those regu-
 7 lations, the mandatory filing through the Automated Ex-
 8 port System for the remainder of exports that were not
 9 covered by regulations issued pursuant to section 1252(b)
 10 of the Security Assistance Act of 1999 (113 Stat. 1501A—

11 506), as enacted into law by section 1000(a)(7) of Public
 12 Law 106–113.

13 (b) **REQUIREMENT FOR INFORMATION SHARING.**—
 14 The Secretary of State shall conclude an information shar-
 15 ing arrangement with the heads of United States Customs
 16 Service and the Census Bureau to adjust the Automated
 17 Export System to parallel information currently collected
 18 by the Department of State.

19 (c) **SECRETARY OF TREASURY FUNCTIONS.**—Section

1 (d) FILING EXPORT INFORMATION, DELAYED FIL-
2 INGS, PENALTIES FOR FAILURE TO FILE.—Section 304
3 of title 13, United States Code, is amended—

4 (1) in subsection (a)—

5 (A) in the first sentence, by striking “the
6 penal sum of \$1,000” and inserting “a penal
7 sum of \$10,000”; and

8 (B) in the third sentence, by striking “a
9 penalty not to exceed \$100 for each day’s delin-
10 quency beyond the prescribed period, but not
11 more than \$1,000, shall be exacted” and insert-
12 ing “the Secretary of Commerce (and officers
13 and employees of the Department of Commerce
14 designated by the Secretary) may impose a civil
15 penalty not to exceed \$1,000 for each day’s de-
16 linquency beyond the prescribed period, but not
17 more than \$10,000 per violation”;

18 (2) by redesignating subsection (b) as sub-
19 section (c); and

20 (3) by inserting after subsection (a) the fol-
21 lowing:

22 “(b) Any person, other than a person described in
23 subsection (a), required to submit export information,
24 shall file such information in accordance with any rule,
25 regulation, or order issued pursuant to this chapter. In

1 the event any such information or reports are not filed
2 within such prescribed period, the Secretary of Commerce
3 (and officers and employees of the Department of Com-
4 merce designated by the Secretary) may impose a civil
5 penalty not to exceed \$1,000 for each day's delinquency
6 beyond the prescribed period, but not more than \$10,000
7 per violation.”.

8 (e) ADDITIONAL PENALTIES.—

9 (1) IN GENERAL.—Section 305 of title 13,
10 United States Code, is amended to read as follows:

11 **“§ 305. Penalties for unlawful export information ac-**
12 **tivities**

13 “(a) CRIMINAL PENALTIES.—(1) Any person who
14 knowingly fails to file or knowingly submits false or mis-
15 leading export information through the Shippers Export
16 Declaration (SED) (or any successor document) or the
17 Automated Export System (AES) shall be subject to a fine
18 not to exceed \$10,000 per violation or imprisonment for
19 not more than 5 years, or both.

20 “(2) Any person who knowingly reports any informa-
21 tion on or uses the SED or the AES to further any illegal
22 activity shall be subject to a fine not to exceed \$10,000
23 per violation or imprisonment for not more than 5 years,
24 or both.

1 “(3) Any person who is convicted under this sub-
2 section shall, in addition to any other penalty, forfeit to
3 the United States—

4 “(A) any of that person’s interest in, security
5 of, claim against, or property or contractual rights
6 of any kind in the goods or tangible items that were
7 the subject of the violation;

8 “(B) any of that person’s interest in, security
9 of, claim against, or property or contractual rights
10 of any kind in tangible property that was used in the
11 export or attempt to export that was the subject of
12 the violation; and

13 “(C) any of that person’s property constituting,
14 or derived from, any proceeds obtained directly or
15 indirectly as a result of the violation.

16 “(b) CIVIL PENALTIES.—The Secretary (and officers
17 and employees of the Department of Commerce specifi-
18 cally designated by the Secretary) may impose a civil pen-
19 alty not to exceed \$10,000 per violation on any person
20 violating the provisions of this chapter or any rule, regula-
21 tion, or order issued thereunder, except as provided in sec-
22 tion 304. Such penalty may be in addition to any other
23 penalty imposed by law.

24 “(c) CIVIL PENALTY PROCEDURE.—(1) When a civil
25 penalty is sought for a violation of this section or of sec-

1 tion 304, the charged party is entitled to receive a formal
2 complaint specifying the charges and, at his or her re-
3 quest, to contest the charges in a hearing before an admin-
4 istrative law judge. Any such hearing shall be conducted
5 in accordance with sections 556 and 557 of title 5.

6 “(2) If any person fails to pay a civil penalty imposed
7 under this chapter, the Secretary may ask the Attorney
8 General to commence a civil action in an appropriate dis-
9 trict court of the United States to recover the amount im-
10 posed (plus interest at currently prevailing rates from the
11 date of the final order). No such action may be com-
12 menced more than 5 years after the order imposing the
13 civil penalty becomes final. In such action, the validity,
14 amount, and appropriateness of such penalty shall not be
15 subject to review.

16 “(3) The Secretary may remit or mitigate any pen-
17 alties imposed under paragraph (1) if, in his or her
18 opinion—

19 “(A) the penalties were incurred without willful
20 negligence or fraud; or

21 “(B) other circumstances exist that justify a re-
22 mission or mitigation.

23 “(4) If, pursuant to section 306, the Secretary dele-
24 gates functions under this section to another agency, the
25 provisions of law of that agency relating to penalty assess-

1 ment, remission or mitigation of such penalties, collection
2 of such penalties, and limitations of actions and com-
3 promise of claims, shall apply.

4 “(5) Any amount paid in satisfaction of a civil pen-
5 alty imposed under this section or section 304 shall be
6 deposited into the general fund of the Treasury and cred-
7 ited as miscellaneous receipts.

8 “(d) ENFORCEMENT.—(1) The Secretary of Com-
9 merce may designate officers or employees of the Office
10 of Export Enforcement to conduct investigations pursuant
11 to this chapter. In conducting such investigations, those
12 officers or employees may, to the extent necessary or ap-
13 propriate to the enforcement of this chapter, exercise such
14 authorities as are conferred upon them by other laws of
15 the United States, subject to policies and procedures ap-
16 proved by the Attorney General.

17 “(2) The Commissioner of Customs may designate of-
18 ficers or employees of the Customs Service to enforce the
19 provisions of this chapter, or to conduct investigations
20 pursuant to this chapter.

21 “(e) REGULATIONS.—The Secretary of Commerce
22 shall promulgate regulations for the implementation and
23 enforcement of this section.

1 “(f) EXEMPTION.—The criminal fines provided for in
2 this section are exempt from the provisions of section 3571
3 of title 18.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions at the beginning of chapter 9 of title 13,
6 United States Code, is amended by striking the item
7 relating to section 305 and inserting the following:
“305. Penalties for unlawful export information activities.”.

MDT.TXT

H.L.C.

35**AMENDMENT TO H.R. 2581****OFFERED BY Mr. Hyde / Mr. Lantos**

Page 163, line 3, strike "and".

Page 163, insert the following after line 3:

- 1 (ii) in the first sentence, by striking
2 "11(c)(2)(B)" after "except that section",
3 and inserting "507(b)(1)"; and

Page 163, line 4, strike "(ii)" and insert "(iii)".

Page 163, line 18, strike "and".

Page 163, insert the following after line 18:

- 4 (B) by striking "11(c)(2)(B) of such Act"
5 after "except that section" and inserting
6 "507(b)(1) of that Act"; and

Page 163, line 19, strike "(B)" and insert "(C)".

Page 164, line 2, strike "and".

Page 164, insert the following after line 2:

- 7 (B) by striking "11(c)(2)(B)" after "ex-
8 cept that section" and inserting "507(b)(1)";
9 and

Page 164, line 3, strike "(B)" and insert "(C)".

Chairman HYDE. All those in favor say aye?

[Chorus of ayes]

Chairman HYDE. Proposed nay?

[No audible response]

Chairman HYDE. In the opinion of the Chair the ayes have it. The ayes have it and the amendments are adopted en bloc.

Are there any further amendments?

[No audible response]

Mr. MENENDEZ. Are there any other amendments at this point that the Chair is offering, Mr. Lantos?

Mr. LANTOS. There are none.

Mr. MENENDEZ. I'd like a last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. MENENDEZ. Mr. Chairman, we have had a long day and I think the bill the Committee sends forward at this point is a bill that will not see, I really do not think, the light of day in terms of an Export Administration Act. It is a bill that is so overwhelmingly weighed in a defense-oriented proposition that it strangulates the commercial enterprises that the United States clearly should undertake, could undertake, and ultimately would do so not only in the interest of the commercial sector of the United States but also in the context of the defense interests of the United States.

Increasingly as a country we have turned, in our defense establishment, to the acquisition of goods from across the world. And we are driven by quantum leaps in telecommunications and computer efficiency and effectiveness. That information, revolution is knocking down physical barriers, wearing national boundaries, and creating cross-border communities of all types.

Clearly, indeed yesterday's U.S. defense industry is, with few exceptions, reconstituting itself into a global, more commercially oriented industry.

Even the National Science Foundation reports that over 80 percent of high technology exports, many of them dual-use, originate from outside the United States. Moreover, high technology commercial exports dwarf armed exports in magnitude.

Accordingly, future U.S. military technological advantage will derive less from advanced component and subsystem technology developed by the U.S. defense sector, than from the military functionality generated by superior, though not necessarily U.S. based, defense sector systems integration skills.

The point being that ultimately what we are doing in this bill as it is constituted is widening the gap between the military capability, between—actually I should say we narrow the gap between the military capability that the United States has and its potential adversaries. We do not widen it. We have not controlled at the end of the day that which is not available in the mass market. We have not controlled just that tip of the iceberg that I have alluded to before that is uniquely in America's control and expertise. And, in fact, I think we have created some very, very difficult problems for ourselves.

So I certainly recognize that those who wish to err, but err seriously on the side of the security equation of this legislation will vote for it, but they will do so, in my belief, to the detriment of America's computer industry. They will do so to the detriment of

America's electronic industry. They will do so to the detriment of America's pharmaceutical industry. They will do so to the detriment of a wide range of high tech information related industries that in fact are where we are at the cutting edge, and to do so, I think, is not realize the realities of the globalization we are in. Ultimately it is not a bill, as it leaves this Committee, that I think can in any way be sustained, nor will it become the law.

Therefore, I think that we have marginalized ourselves as a Committee. But I appreciate the Chairman's time and look forward to the final vote.

Chairman HYDE. I thank the gentleman, and I simply want to say how much I disagree with the gentleman from New Jersey, although I have every high respect for his dedication and acumen. I just think he is wrong. I think the changes we have made are minor, but important. I do not think they will inhibit the free flow of commerce. I think they have indicated that national defense and security are not an orphan when it comes to legislation, and I think we have got a good product here.

In any event, the Chair will entertain a motion that the bill be reported favorably to the House.

Mr. MENENDEZ. So moved, Mr. Chairman.

Chairman HYDE. The question occurs on the motion to report the bill H.R. 2581 favorably as amended.

All in favor say aye.

[Chorus of ayes]

Opposed nay?

[Chorus of nays]

Chairman HYDE. The ayes have it—

Mr. MENENDEZ. Mr. Chairman, on that I ask a recorded vote.

Chairman HYDE. A recorded vote has been requested and the clerk will call the roll.

Ms. BLOOMER. Mr. Gilman?

[No response]

Ms. BLOOMER. Mr. Leach?

Mr. LEACH. Yes.

Ms. BLOOMER. Mr. Leach votes yes.

Mr. Bereuter?

Mr. BEREUTER. Yes.

Ms. BLOOMER. Mr. Bereuter votes yes.

Mr. Smith?

Mr. SMITH. Yes.

Ms. BLOOMER. Mr. Smith votes yes.

Mr. Burton?

[No response]

Ms. BLOOMER. Mr. Gallegly?

[No response]

Ms. BLOOMER. Mrs. Ros-Lehtinen?

[No response]

Ms. BLOOMER. Mr. Ballenger?

[No response]

Ms. BLOOMER. Mr. Rohrabacher?

[No response]

Ms. BLOOMER. Mr. Royce?

Mr. ROYCE. Yes.

Ms. BLOOMER. Mr. Royce votes yes.
Mr. King?
[No response]
Ms. BLOOMER. Mr. Chabot?
Mr. CHABOT. Yes.
Ms. BLOOMER. Mr. Chabot votes yes.
Mr. Houghton?
Mr. HOUGHTON. No.
Ms. BLOOMER. Mr. Houghton votes no.
Mr. McHugh?
[No response]
Ms. BLOOMER. Mr. Burr?
[No response]
Ms. BLOOMER. Mr. Cooksey?
Mr. COOKSEY. No.
Ms. BLOOMER. Mr. Cooksey votes no.
Mr. Tangnedo?
[No response]
Ms. BLOOMER. Mr. Paul?
Mr. PAUL. No.
Ms. BLOOMER. Mr. Paul votes no.
Mr. Smith?
[No response]
Ms. BLOOMER. Mr. Pitts?
[No response]
Ms. BLOOMER. Mr. Issa?
[No response]
Ms. BLOOMER. Mr. Cantor?
Mr. CANTOR. Yes.
Ms. BLOOMER. Mr. Cantor votes yes.
Mr. Flake?
Mr. FLAKE. No.
Ms. BLOOMER. Mr. Flake votes no.
Mr. Kerns?
Mr. KERNS. Yes.
Ms. BLOOMER. Mr. Kerns votes yes.
Ms. Davis?
Ms. DAVIS. Yes.
Ms. BLOOMER. Ms. Davis votes yes.
Mr. Lantos?
Mr. LANTOS. Yes.
Ms. BLOOMER. Mr. Lantos votes yes.
Mr. Berman?
[No response]
Ms. BLOOMER. Mr. Ackerman?
[No response]
Ms. BLOOMER. Mr. Faleomavaega?
[No response]
Ms. BLOOMER. Mr. Payne?
[No response]
Ms. BLOOMER. Mr. Menendez?
Mr. MENENDEZ. No.
Ms. BLOOMER. Mr. Menendez votes no.
Mr. Brown?

Mr. BROWN. Yes.
Ms. BLOOMER. Mr. Brown votes yes.
Ms. McKinney?
[No response]
Ms. BLOOMER. Mr. Hilliard?
Mr. HILLIARD. Yes.
Ms. BLOOMER. Mr. Hilliard votes yes.
Mr. Sherman?
Mr. SHERMAN. Yes.
Ms. BLOOMER. Mr. Sherman votes yes.
Mr. Wexler?
[No response]
Ms. BLOOMER. Mr. Davis?
Mr. DAVIS. Yes.
Ms. BLOOMER. Mr. Davis votes yes.
Mr. Engel?
[No response]
Ms. BLOOMER. Mr. Delahunt?
[No response]
Ms. BLOOMER. Mr. Meeks?
[No response]
Ms. BLOOMER. Ms. Lee?
Ms. LEE. Yes.
Ms. BLOOMER. Ms. Lee votes yes.
Mr. Crowley?
Mr. CROWLEY. Yes.
Ms. BLOOMER. Mr. Crowley votes yes.
Mr. Hoeffel?
Mr. HOEFFEL. Yes.
Ms. BLOOMER. Mr. Hoeffel votes yes.
Mr. Blumenauer?
[No response]
Ms. BLOOMER. Ms. Berkley?
Ms. BERKLEY. Yes.
Ms. BLOOMER. Ms. Berkley votes yes.
Ms. Napolitano?
Ms. NAPOLITANO. Ms. Napolitano votes yes.
Ms. BLOOMER. Mr. Schiff?
[No response]
Ms. BLOOMER. Ms. Watson.
Ms. WATSON. Yes.
Ms. BLOOMER. Ms. Watson votes yes.
Mr. Hyde?
Chairman HYDE. Aye.
Ms. BLOOMER. Mr. Hyde votes yes.
Mr. GILMAN. Mr. Chairman, am I recorded?
Ms. BLOOMER. Mr. Gilman has not voted.
Mr. GILMAN. Yes.
Ms. BLOOMER. Mr. Gilman votes yes.
Mr. ROHRBACHER. Mr. Chairman, am I recorded?
Ms. BLOOMER. Mr. Rohrabacher has not voted.
Mr. ROHRBACHER. Yes.
Ms. BLOOMER. Mr. Rohrabacher votes yes.
Mr. BURR. Mr. Chairman?

Ms. BLOOMER. Mr. Burr has not voted.
 Mr. BURR. No.
 Ms. BLOOMER. Mr. Burr votes no.
 Chairman HYDE. Mr. Gallegly?
 Mr. GALLEGLY. Yes.
 Ms. BLOOMER. Mr. Gallegly votes yes.
 Mr. MCHUGH. Mr. Chairman, how am I recorded?
 Ms. BLOOMER. Mr. McHugh has not voted.
 Mr. MCHUGH. Aye.
 Ms. BLOOMER. Mr. McHugh votes yes.
 Chairman HYDE. Mr. Ackerman?
 Mr. ACKERMAN. Aye.
 Ms. BLOOMER. Mr. Ackerman votes yes.
 Ms. Ros-Lehtinen?
 Chairman HYDE. Ms. Ros-Lehtinen?
 Ms. ROS-LEHTINEN. Yes.
 Ms. BLOOMER. Ms. Ros-Lehtinen votes yes.
 Chairman HYDE. Have all voted who wish?
 Ms. BLOOMER. Mr. Issa?
 Mr. ISSA. No.
 Ms. BLOOMER. Mr. Issa votes no.
 Chairman HYDE. The clerk will report.
 Ms. BLOOMER. On this vote there were 26 ayes and 7 noes.
 Chairman HYDE. The motion is agreed to. Without objection the
 Chairman is authorized to move to go to conference pursuant to
 House Rule 22.
 Without objection——
 Mr. Engel, I'm sorry. When we so could have used your vote.
 I am told by the Parliamentarian that once the vote is announced
 a Member may not be recorded. I am so sorry. Why do you not indi-
 cate, if you have a statement that had you been here——
 [Mr. Engel nodded in the affirmative.]
 Chairman HYDE. Thank you. That will appear in the record.¹
 Without objection, the staff is directed to make any technical and
 conforming changes.
 Without objection, the resolution will be reported favorably to the
 House in the form of a single amendment in the nature of a sub-
 stitute incorporating the amendments adopted here today.
 The Committee stands adjourned with the thanks of the Chair.
 [Whereupon, at 5:20 p.m., the Committee was adjourned.]

¹No statement for the record was received from Mr. Engel.

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

H. CON. RES. 188

I am pleased to offer my strong support for this resolution, which calls on the Government of the People's Republic of China to do no more than what it is already obliged to do by international law, by its own constitution, and by the rules of common decency and civility: to stop its persecution of people who have committed no crime except to hold personal beliefs and engage in nonviolent practices—in this case breathing exercises—to which the government for some reason objects. We keep hearing about how China is “opening up,” but apparently the Beijing regime still feels it has the right to tell people not just how to think, but also how to breathe.

The facts about the current crackdown on Falun Gong practitioners are egregious, even by PRC standards. Tens of thousands of these people have been tortured in labor camps, prisons, and mental hospitals, and literally hundreds of thousands forced to attend brainwashing classes. The number of Falun Gong practitioners who are known to have died from torture in China has now risen to 253. Practitioners who are women have been singled out for rape and for forced abortion. The victims of these atrocities have included a number of United States citizens and lawful permanent residents, as well as hundreds of thousands of China's own citizens.

This resolution is the very least we can do to let the Government of China know that these brutal practices must end. I urge a unanimous favorable vote on this resolution.

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, as the principal sponsor of the Viet Nam Human Rights Act I would like to offer a brief explanation of the provisions of the Act. I also have an amendment in the nature of a substitute, which I hereby move be adopted by the Committee.

Mr. Chairman, as relations between the United States and Viet Nam approach full “normalization”, the government in Hanoi is unfortunately getting worse, not better, in the way it treats those of its own citizens who share our values. During the last few months Hanoi has arrested a prominent leader of the Unified Buddhist Church, a Catholic priest who gave written testimony to the U.S. Commission on International Religious Freedom, and any number of evangelical Protestant ministers and believers. Since February the government has also waged a brutal crackdown against members of the Montagnard ethnic minority groups who participated in peaceful demonstrations asking for religious freedom and for return of their confiscated lands. So as we move toward 100 per cent “normalization” with the Bilateral Trade Agreement, we also need to make very clear—to the Hanoi regime and also to its victims—that expansion of trade relations does not mean we approve of the government's egregious record of violating the human rights of the people of Viet Nam, or that we do not care.

The Viet Nam Human Rights Act contains a number of provisions designed to ensure that the promotion of freedom and democracy will be a central element in U.S. policy toward Viet Nam:

First, the bill tells the truth about human rights in Viet Nam. It contains an honest and detailed assessment of violations by the Government of Viet Nam of the

rights to freedom of expression, association, and religion, and the rights of workers, as well as persecution of ethnic minorities including the Montagnards and of persons associated with the U.S. prior to 1975.

The bill then links future increases in non-humanitarian foreign aid to Hanoi to progress on human rights. It does not affect existing aid, or any kind of humanitarian aid, and it does not limit assistance that is provided through nongovernmental organizations rather than through the government. But it does require that the government make “substantial progress” toward the release of political and religious prisoners, an end to religious persecution, respect for the rights of ethnic minorities, and elimination of trafficking in human beings before getting any further increases in government-to-government, nonhumanitarian U.S. assistance.

The bill is also designed to ensure that the U.S. government use other tools at its disposal to promote freedom and democracy in Viet Nam. The Act authorizes assistance to nongovernmental organizations committed to promoting freedom and democracy in Viet Nam. It promotes more vigorous efforts to overcome the jamming of Radio Free Asia by the government of Viet Nam. It will require the State Department to take steps to ensure that U.S. cultural and exchange programs are open to people who share our values, not just to Vietnamese government and Communist Party officials and persons close to such officials. And it also requires the Department to make sure that we have made every reasonable effort to locate and assist people who were eligible for U.S. refugee programs but were denied access to these programs. Most of these people have been persecuted because they fought on our side during the war or were associated with the United States in some other way.

Mr. Chairman, my Amendment in the Nature of a Substitute addresses concerns that were expressed by Mr. Lantos, the Ranking Democratic Member, and other members who were concerned that the bill as introduced might go too far. The amendment eliminates the executive-legislative commission in Title I of the bill, and substitutes a simpler mechanism—an annual determination by the President of whether the government of Viet Nam has met the four human rights benchmarks set forth in the bill. It also modifies these benchmarks to make them fully attainable—the amendment requires only “substantial progress” instead of full compliance with each benchmark. Finally, it provides that the restrictions on U.S. nonhumanitarian assistance will apply only to increases in such assistance—not to any assistance that we are already providing. So the bill as amended is a reasonable, moderate attempt to make sure that we use every reasonable means at our disposal to make sure that the benefits of “normalization” extend not only to the government, but to ordinary people in Viet Nam, especially those who share our commitment to freedom and democracy.

I respectfully request adoption of the amendment and of the bill as amended.

PREPARED STATEMENT OF THE HONORABLE ILEANA ROS-LEHTINEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

In the last two years, there has been a systematic escalation of horrific attacks launched by Chinese authorities against Falun Gong practitioners.

Recently, the deplorable actions by the Chinese authorities have included the brutal torture of Falun Gong women at a labor camp, resulting in the death of 15 innocent victims.

When the family of one of these victims saw her body, the area around the eyes was black and blue. There were still finger marks on her face from being slapped.

There were strangulation and rope marks on her neck. The shoulder blades and back were heavily bruised, and the arms fractured.

On June 20th of this year, we received the horrifying news that local police had *burned* a Falun Gong practitioner to *death* and *dragged* two others through the streets at such a high speed that their bodies were virtually mutilated.

Since the crackdown officially began on July 21, 1999, many Falun Gong followers have been suspended or expelled from school, demoted or dismissed from their employment, held in prison or sent to labor camps and psychiatric hospitals—all because they chose to live by the strength of their convictions and refused to renounce their beliefs.

Thus, as a human being and a refugee of another Communist regime who oppresses its people and uses the same methods to implement its policy of intolerance, I was *compelled* to act.

As Chairman of the Subcommittee on International Operations and Human Rights, I had to find the means to challenge such heinous actions by Chinese officials—actions which *defy all moral standards*.

I had to use the tools available to the Congress to help ensure an end to the two year reign of terror launched against the Falun Gong—a group whose only crime is the desire to practice their beliefs free of coercion and intimidation.

For this purpose, I filed H.Con.Res. 188 which is supported by 59 of our colleagues in the House.

This resolution calls on the Chinese leadership to cease its persecution of Falun Gong practitioners.

It further directs the agencies of the U.S. Government to use every appropriate public and private forum to press the Chinese authorities to *release* all Falun Gong religious prisoners, and to immediately *cease* the use of *torture* and other *cruel, inhumane* and degrading treatment against the Falun Gong and other prisoners of conscience.

It coincides with the goals stated in P.L. 106–286 signed into law on October 10, 2000 which authorized PNTR status to China but underscored U.S. criticism of the Chinese authorities' violations of religious freedoms and other human rights.

This resolution sends a message that the U.S. Congress will remain vigilant about the PRC's policies and actions regarding the fundamental rights of its citizens as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, among others.

And my dear colleagues, the Chinese authorities are listening. Since filing this resolution, my offices have been flooded with telephone calls from Chinese embassy officials trying to squelch this debate and influence me withhold action on this measure.

However, if the U.S. Congress does not give voice to those who are persecuted and defend the rights of all to be free and to practice their beliefs free of intimidation and coercion, who will stand up for them?

It has been said that the only thing necessary for the triumph of evil is for good men and women to do nothing.

Therefore, I call on my colleagues in this Committee to render their support to the Falun Gong and other victims of oppression in China and vote for H.Con.Res. 188.

PREPARED STATEMENT OF THE HONORABLE CASS BALLENGER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NORTH CAROLINA

H. RES. 181

Mr. Chairman:

Today, we have before the Committee H. Res. 181, congratulating the president-elect of Peru, Alejandro Toledo, and congratulating the people of Peru for the return of democracy and expressing sympathy for the victims of the recent earthquake that struck Peru.

It is fitting that this resolution enjoys extensive, bipartisan support. The Peruvian people stood firm and reversed the manipulation of democracy that occurred in their country. Here in the United States Congress, key Republicans and Democrats took a principled stand together in support of the Peruvian people.

Peru inaugurated its new president last Friday. Accordingly, I ask my colleagues join me in support of this timely resolution.

PREPARED STATEMENT OF THE HONORABLE CASS BALLENGER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NORTH CAROLINA

H. CON. RES. 89

Mr. Chairman: The Committee will now consider H. Con. Res. 89.

On October 12, 2000, ten men—including five Americans—were abducted from an Ecuadorean oil field. On January 31, 2001, Ron Sander of Sunrise Beach, Missouri, was brutally murdered by his captors. The hostages spent 141 days in captivity and endured malnutrition, isolation, and physical and mental abuse.

On June 23, 2001, Colombian National Police General Jose Leonardo Gallego's anti-kidnaping unit—working with U.S. authorities—arrested 59 people, including eight men accused of abducting the ten oil workers in Ecuador. We thank General Gallego for his good work in bringing these criminals to justice.

Please join me in supporting this resolution expressing condolences to the family of Ron Sander and welcoming the released American captives back home.

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